GEN

ALLEN COUNTY PUBLIC LIBRARY
3 1833 01703 3470

Gc 974.702 N422g
GRIDLEY, WILLIS TIMOTHY.
TRINITY!

TRINITY! BREAK YE MY COMMANDMENTS?

By

WILLIS TIMOTHY GRIDLEY

A Disbarred New York Attorney

Illegally
Indicted March 2, 1928.

CONVICTED AND SENTENCED
MARCH 15, 1929
before
JUDGE ARTHUR J. TUTTLE
DETROIT, MICH.

"You are beaten to earth? Well, well, that's that?
Come up with a smiling face.
It's nothing against you to fall down flat,
But to lie there—that's the disgrace.
The harder you're thrown, why the higher you bounce;
Be proud of your blackened eye!
It isn't the fact that you're licked that counts
It's how did you fight and why?"

Author and Publisher, Willis Timothy Gridley, Four-eleven Fulton Street, East, Grand Rapids, Michigan

Allen County Public Library
900 Webster Street
PO Box 2270
Fort Wayne, IN 46801-2270

Copyright 1930
By
WILLIS TIMOTHY GRIDLEY.

This is No. 2349
of the first edition of which
2500 volumes were printed.
1992 owned by Kennelect

Willis Timothy Gridley

FREEDOM! JUSTICE! EQUALITY!

Do you now believe in freedom,
  Justice and equality;
That our laws should be administered
  With impartiality?

Have we scrapped our Constitution?
  Do we reverence as of yore,
Government for and by the people,
  Or, has influence closed that door?

When you answer these three questions,
  Read within, and you will see,
Times have changed since our old forebears
  Fought for independency.

—Willis Timothy Gridley.

I
Dedicate this book
to the
band of true, loyal and devoted friends, known as the
Advocates of Justice for the Descendants
of
Anneke Jans Bogardus,
whose courage and constancy in an honest cause, has made this publication possible, and whose valor tried in the fiery furnace of persecution and adversity, has been the inspiration to the author to endure and go calmly on.

The numbers throughout the context refer to the full record given in the appendix.

The asterisk (*) throughout the context signifies that the subject has not been exhausted by the writer, and will be completed in a later volume.

PREFACE

Reader, have you ever felt the urge to fight for a "Lost cause?"

Does your blood ever boil, and your indignation rise, when you read in the public press of some gross injustice done your fellowman?

Do you feel a reverence for our worthy old Dutch Pioneers, who gave so much to the making of free America?

Mr. Lawyer, have you, when reading a decision, reached the conclusion that it would soon find its place in the category of cases "Distinguished, explained, modified or reversed?"

Is it not true that our Appellate Courts, comprising five, seven, nine jurists, with the selfsame facts, the selfsame papers before them, differ in their decisions?

Have you ever read a case which included a dissenting opinion? What lawyer is there who can say that a dissenting opinion has not been of untold value to him in his work?

Have you ever heard of a Judge being prosecuted for writing a dissenting opinion?

Are there not decisions, pro and con, to be found dealing with almost every legal proposition?

How are previously announced doctrines of law reversed, if not through the urge of eminent lawyers disagreeing with former decisions?

Does a treatise on the law spell in the English language "would recover," and if so, would it not follow that in every case on appeal where opposing counsel file briefs, citing opposing cases on the selfsame propositions of law, both must recover?

Could one successfully maintain that our laws are unchangeable, as long as our people vote, Legislatures function, and courts reverse themselves?

Has it ever been a crime for a man to urge that a law transgresses our bill of rights, constitutions, treaties?

Does our constitution reserve to the people the right to nullify and rectify judicial error, when it becomes oppressive or repugnant to public sense of justice and truth? How was direct taxation effected?

The States lost control of their people? Can they control and regulate their corporations? Are religious corporations exempt? Were not the railroads forced to dispose of their coal lands, notwithstanding their long vested ownership? Has the State of Michigan recently dealt a death blow at a religious organization for immoral or unmoral conduct?

Will anyone deny that both our government and the State of New York, upon a clear showing of the existence of a moral obligation, in this or any matter, has a right through enabling legislation to liquidate such obligation, even after the Court says no claim exists?

Subject to the inhibition against forfeiture, and impairment of the obligation of contracts, was not the right reserved to the States to make their own property laws?

With these reservations indelibly written in our constitution, has anyone the right to claim unqualified vested interests, and deny the possibility of the exercise of constitutional privileges on the part of the people?

When the Supreme Court decided that the Confederate Bondholders had no claim, no standing in court, were their rights barred, or merely barred so far as the courts were concerned? What did they do? Did they organize and appeal to the great court of public opinion and were they successful?

How about the women's suffrage movement? Did not the courts deny them the right of suffrage, and did that bar them from any further action? If their rights were forever determined by that court decision, why then did they organize? Did they not organize in every state in the union, for the purpose of one State helping the other to arouse and invoke the great court of public opinion, in favor of the women's right to vote? They surmounted all difficulties and opposition by appealing to the greatest power of the universe, which the wise judge, the foolish defy, and the skilful direct, for private opinion is weak, but public opinion is almost omnipotent.

By what right does the Socialistic party use the mails, for their fundamental belief is State ownership of all property, the accomplishment of which can only be possible through constitutional amendment?

What are vested rights? Are they not subject to constitutional reservation granted the people to amend, alter or revise their constitution.

Is there such a thing as an absolute vested right, save the final, reserved right reposed in the people, to make their own laws? Is not their law supreme? Who are the final arbiters?

Do you believe that any law, emanating from a Legislature, which sanctions an individual doing those things which the State itself is prohibited from doing, should be nullified and obliterated?

These questions are propounded for the purpose of preparing my readers for the paramount issue contained in these pages. This is not merely a book, dear reader, for if it were, I would need to apologize for many sins of commission in diction and those fine points which make for good storytelling. This is an appeal, an earnest, urgent appeal, for your help to obliterate from our midst these octopuses, whose tentacles are reaching out and fastening on the vital points of the industrial life of our country; for your help to curb this subsidized press, which serves as a mouthpiece only for great financial powers, to the great cost of the poor and lowly; for your help in asking our government for an investigation into the conditions surrounding the selection of Federal Juries, that the innocent may have afforded them at least the protection of the Constitution of the United States, and that this pernicious, damnable grand jury system shall be curbed and governed by, and come under the statutes in such case made and provided, and be compelled to adhere to such statutes.

I humbly apologize for this hastily compiled, limited and disjointed presentation of a most interesting subject. It has been prepared under the most terrific strain, and most trying circumstances a man could face. When rancor shall have passed, when the jealousies and spleen, which have surrounded this work for the past five years shall have been assuaged, when my government shall have concluded this disgraceful persecution to their entire satisfaction, I will, if God spares me, take up this subject again, and present it more fully than at this time.

Can I paint the picture? The organization financing the publication of this book was formed in the closing days of 1923. Its plans and purposes were solely the publication of the Bogardus side of the story, having to do with the passing out of the title to the lands on Manhattan Island, which had originally belonged to the children and heirs of Anneke Jans Bogardus. These people believe they have a right to publish their story, to publish the truth, a con-

stitutional right. They believe they have a right to capitalize their story, knowing full well that the property, to which the children and heirs of Anneke Jans Bogardus received a grant from the English Governor Nicolls, has passed into the keeping of Trinity Church Corporation. They want the Christian world to know the truth, and though the courts of justice have been closed against them, they have an abiding faith that even Trinity Church with all its millions, cannot face the verdict of the Christian world. They are invoking public opinion as an effective corrective measure. Not a very foolish or ridiculous plan.

Importuned to write this book giving the history of this family, and finally consenting under certain fixed arrangements, by which I was to receive for my reward only fifteen per cent of the proceeds of its sale, provided the interested organization financed the publication, I am today a convicted man, at the hands of your government, my government, if you will call it government, for having dared to put in black and white the truth. Think of it! After repeated refusals to have anything to do with them, I am accused of inducing them to finance this book. If I was so anxious to handle their money why did I refuse to have any dealings with them?

I am accused further, of representing to them that with this book they would recover the New York property, and for doing all this, I was to receive no compensation whatsoever, except the fifteen per cent from the proceeds of the sale of the book. Do you think any sane man at sixty years of age, after he had been disbarred for his connection with this family history, would sacrifice and hazard the balance of his life making any such ridiculous promises, merely for the privilege of handling these people's money? Or, do you think, as is the truth, that I was actuated solely by the conviction, from previous experience, that this family was entitled to have the truth published, both for their own and for public knowledge, together with a personal desire to vindicate my own position, for which I was disbarred. Feeling, as I do, that I was wrongfully disbarred, have I not the right to feel vindictive? What more natural weapon could I turn to than the pen? Persecution and suffering have called forth some of the finest books ever written. Is there a truer saying than "The pen is mightier than the sword?"

Dreyfus, as he stood in that court yard and was stripped of his sword, buttons and gold lace, suffered no more than did I when I was stripped of my sheepskin. You parents who have stood at the bedside of a loved one, and seen the little life ebbing away in the throes of agony and suffering, powerless to stop the hand of death, suffered no more than did I when I was disbarred. Do you remember that excruciating agony of reaching out and finding—nothing! Then my dear reader you can picture my sufferings; for I was helpless to stem the tide. I had no comfort save the consciousness that I was innocent of those charges brought against me. I reached out and found—nothing. I ask you now, what more worthy or natural purpose could I have than to vindicate my good name, and obliterate the stain put upon me when I was stripped of my sheepskin, and drummed out of the legal profession. And for that desire, that most unholy desire, to vindicate my good name, and, at the same time, give this family knowledge, sorely needed knowledge at that, my government, your government, on the perjured testimony of less than a dozen planted, demitted, disgruntled, bought or influenced members of this interested organization, says I shall serve five years in Leavenworth, over the protest of about fifteen hundred American Citizen-members of this organization, who are not such dupes, villains or fools, as Federal Judge Tuttle branded them, but what they can see back of this prosecution, the aim to serve outside interests to prevent the publication of this book.

Do you believe that a man who, in his urge to be of some benefit to mankind, and to bring certain conditions before the public, enters the arena with the financial aid of others, should be persecuted or prosecuted through the use of either bought or influenced testimony, by pandering to the jealousies and spleen of known enemies, to establish that he guaranteed what even the President of these United States could not guarantee "A would recovery" and that things would take place which nothing but a universal outcry and denunciation could accomplish?

Do you believe that any man should be allowed without the gates of an institution for feeble minded, who would take the witness stand and testify that he was urged into a "Fight," into a "Battle," into a "War," of trying out certain facts before the great court of public opinion, and that the definition of this statement meant that he was going to be given evidence upon which he could and would recover some property? If fight, battle and war, mean recovery, then I do not understand the meaning of the English language.

Dreyfus was exonerated by public acclaim—public opinion, and I am appealing to that same power to exonerate me.

In the face of the conditions now existing, it did seem to me that it was necessary, at this time, to place this book before the reading public, in the hope of arousing them to the realization of certain conditions which strike at the very heart of the sacred and fundamental principles, so dearly bought by our forebears, and by them made the cornerstone of our Republic.

Will you believe, reader, that a man can be convicted of defrauding people, without some showing of personal gain?

Just a word of warning, my dear reader, or rather those who see nothing but ridicule in the struggle of the descendants of Anneke Jans Bogardus for some recognition of their rights—fortune plays strange pranks with our lives, and it behooves each one of us to mark well the vicissitudes which surround our fellowman, lest we too come to the same milestone, and find ourselves at that last place of appeal, as do these people, public opinion; for, not until we occupy that narrow space, six feet of earth which makes us all of one size, are we safe from the hidden enemy, the cringing sneak, who, like a snake crawls on his belly waiting for the chance to lift his head and strike.

The author asks your serious consideration of this question—Have we today, in our midst, gigantic financial and industrial powers, who are wielding a dictatorial influence in our public affairs, for their personal benefit or aggrandizement, to the extent that the low and humble can be persecuted, tortured and electrocuted at their will?

The history of this Bogardus Family, and the author's connection with it, is replete with such persecution, and if Anneke Jans Bogardus descendants have earned nothing else, they have earned the right to the reverence and respect of every American citizen. The G. A. R.'s and the D. A. R's are treated with the highest reverence, the highest terms of respect, in your newspapers and periodicals, but who were the revolutionaries—sons of those pioneers who founded the new world—the good old sturdy Dutch, of whom Anneke was one. Why, why do the newspapers and periodicals treat the Bogardus descendants with the vilest sort of insults, ignomy and scorn?

Fate takes the strangest sort of quirks. Here you have

a family genealogy going back of the G. A. R's, back of the D. A. R's, back to the old pioneer days when it was far from easy sailing in the new world, back to a woman who brought into the world stalwart sons to fight for American Independence, and these descendants have been subjected to every conceivable sort of ridicule, derision, and persecution human brain could event, while at the same time the American public have lauded to the skies the exponent of that very power which, but for the good old Dutch backbone in that Army of the Revolution, would have, at that period, obliterated our prated American liberty. Confess that this is a strange quirk.

Why is it that no matter what plan or purpose is made by the descendants of Anneke Jans Bogardus, those plans are immediately dubbed by the press and public officials as an attempt to bring some sort of a strike suit, in the hope of wresting from Trinity Church this Bogardus farm, and this in spite of the fact it is common knowledge the farm has been in the possession of Trinity Church for over two hundred years? All the protestation and proof in the world will not convince the public officials and the Press. It is a suit, it must be a suit willy nilly, and a suit it shall be. God knows a nose by any other name would smell equally as well, and blow equally as hard, and get equally as red if the prohibition laws are not observed by the owner, but if such words as "The plans and purposes of this organization are solely the publication of a book by W. T. Gridley" spell suit, and entitle any man to swear that I promised him any property, then there are a great many millions of people entitled to a refund on the amount spent for their education.

Why should we have such conditions? Who owns the Press? Is it fast becoming the bludgeon of the concentrated money power of the United States? Apropos of the power of the press, just hark back a few weeks to its pacifist-like treatment of the gold magnates who staged that holocaust in that great financial gambling centre, that little side street over which old Trinity Church stands in blessing; a game of shuttlecock with the American investor which smells to heaven worse than any Louisiana Lottery swindle. The shaking down of the great American public by that inside financial ring—that invisible government of our country, aye the invisible power of the universe, for it would seem that in getting away with this last shake down they can dangle this terrestrial globe on the tips of their thumbs, and hold it there while the world stands aghast, until all the financial hands are called in to put the dear old globe back on terra firma. Where was the press, what stand did the press take on this wholesale fleecing of the lambs? Lauded to the skies the efforts of the financial barons in striving to put confidence into the people. Ye gods what a farce! And what of the poor public? Oh, you go back to work!

Did you ever take a ball and try to put it to the bottom of a pail of water, and make it stay there? You have read of the fat boy in Pickwick Papers who filled himself up and called for more, have you not? Well I guess I'm either that irrepressible rubber ball, or a direct descendant of the fat boy in Pickwick Papers. I bounced up again, and called for more, some five years after being disbarred for my connection with this family history. I repeatedly refused to help them, for I felt that they rather left me flat at the time of my disbarment, but later I gave in, and told them I would publish in book form, for public sale, their side of the story of the passing out of this title, which, to my knowledge has never before been told. All I asked them to do was to finance the publication, which they agreed to do.

Hence, to the disgraceful episode of my disbarment, can now be added an illegal indictment, and a prejudged and biased trial. I have said "illegal" advisedly, for somehow I have labored under the impression that there were certain prerequisites necessary to a true bill of indictment; that our American constitution guaranteed all men against illegal prosecution, and, as well, a fair hearing under a true bill of indictment. Well, my friends, you can live all your life under a cloud of misapprehension, and be suddenly jolted out of that smug position into a perfect deluge of unwanted knowledge, and find all your pet theories knocked into a cocked hat. Yes, I have always understood that our laws provide certain qualifications for Grand Jurors; for, verily, do they not have in their keeping for the nonce the life and liberty of our citizens. The statutes provide that they shall be of good character; they shall have been on the assessment roll of the township for the past year; they shall have all their faculties; they shall not have requested their appointment or selection for Grand Jury service. It was also my understanding, or rather the statutes so provide, that the sessions of the Grand Jury shall be secret; that no witness appearing before that body shall be bullied or intimidated. Of course all these were misapprehensions on my part, for each and every one of these provisions were violated, and when brought to the attention of the Court, were dismissed with a long dissertation and argumentative talk, ending in all constitutional rights being ignored. I have somewhere, sometime, heard how the Kaiser scrapped treaties, but have never learned how the Constitution could be suspended or scrapped.

Here are the violations:

Several of the members of the organization were outside of the Grand Jury room the day the two lady members of the organization were called before the Grand Jury. They saw the Post Office Inspector, named Walter, who had worked up this case for the government, go in and out of the Grand Jury room.

One of the jurors was exceedingly deaf.

When the jurors left the room at recess, one of them was recognized as the sister-in-law of the Pontiac postmaster, a section where members of the organization had frequently reported trouble with their mail. This person knew of this matter and knew several members of the organization. Upon investigation it was found that she was not a property owner, and that her name had not been on the assessment roll for at least ten years. How then did her name get into the Grand Jury box? Was it ever there? Have we here an unqualified juror, direct from the home of the Pontiac Postmaster, called for this particular term, at which this important matter was scheduled to be put over?

Like a bolt from the blue, the question came to me—is it fixed?

A meeting of the leaders of the organization was held, and it was determined to investigate the Grand Jury.

With the illegality of this indictment apparent, were we not entitled to a full investigation?

When, before the arraignment, this matter, challenging the legality of the indictment, was called to the Court's attention, was it not his duty to call this Grand Jury before him, and personally ascertain whether it was legally qualified to sit in judgment on this matter? Had this been done, a long and very expensive investigation would have been saved this organization. The Judge dismissed the motion to quash the indictment, brought on the ground that this was an illegally constituted Grand Jury, made before

arraignment March 6th, 1928, with the words "They shall not escape on any such technicality." Of course the Court referred to an escape from the illegal indictment, no other being presented.

Do you believe any man should be put to the humiliation and expense of defending himself against an illegal indictment?

The investigation authorized by the organization, disclosed further:

One juror, someway connected and a frequenter of a speak-easy, acknowledged he had asked to be placed on the grand jury, and knew before being called that he was to serve.

Another was found to be a professional juror.

Others stated they had asked to have their names placed for jury service.

Some made the statement that the Post Office Inspector, Walter, was in and out of the Grand Jury room during the sessions when this matter was under investigation. Here you have the man who worked up this case, and gathered the witnesses (less than a dozen out of an organization of over fifteen hundred) for the government, standing over them while testifying before this Grand Jury. Why was this necessary? Was he there to see that these schooled witnesses made good, or for what purpose was the law transgressed? Why was this violation camouflaged when before the Court? Why was it Walter never presented an affidavit in denial of his presence in the Grand Jury room? Why was it the public officials, under oath to uphold the law of our land, did not then and there determine whether his presence in the Grand Jury room vitiated that indictment? He was present in court when this question was before the Court. Did the public officials know that Walter could not deny it? If so, was not every step taken by these public officials from that hour, a refusal on their part to respect their oath of office, for which they are properly chargeable with malfeasance of office? Had they obtained an indictment without the legal proof to justify it, from a hand-picked jury, and feared to re-enact the scene?

The investigator also pried loose information from one of the jurors, that one of the witnesses perjured herself, that she was taken from the Grand Jury room and locked up for perjury, and then changed her tune. The investigator asked the man how he knew the witness changed her tune, did she return to the Grand Jury room? "Oh no," he said, "But we were told that."

One of the lady members of the organization who was a witness before the Grand Jury, was bullied, threatened and intimidated, and Post Office Inspector Walter removed her from the room, giving the jury the impression she was to be locked up on a perjury charge. Several of the members of the organization have made affidavit that as she came from the jury room with Walter she excitedly exclaimed "Lizzie they are taking me for perjury—they say I lied, and I did not lie, I told the truth." This witness was not locked up. She was a witness on the trial for the defendant and stuck to her story. Query: Was it necessary to make this Grand Jury believe this lady changed her tune?

The investigator selected by my attorneys reported much difficulty in securing affidavits from the Grand Jurors. While they would talk, only four made affidavits. These affidavits covered the most vital transgressions that occurred in the Grand Jury room. Upon being served with these affidavits, with our motion to quash, if reports are true, the government sent out two men to bring these jurors in to sign retractions. Three signed retractions, one refused.

Here you have three men swearing that they lied under oath before. Who refreshed their recollection? Were they so dumb they did not know the truth, or were they coerced? Were they qualified men, if they did not have the backbone to tell the truth, tell the same story twice alike within thirty days? Should there have been an investigation as to how these stock form of affidavits were procured?

A lady juror, whom I personally interviewed, was asked by me, giving her the name of the witness before the Grand Jury, if the District Attorney called her a liar, and threatened her with perjury, and she said "Yes, but she did lie." This person signed one of these stock form affidavits, containing the following: "That these witnesses were not treated in any manner other than an attorney could or would treat an apparently interested and hostile witness, as this deponent has seen and heard attorneys question such witnesses in open court, and that there was no undue pressure or intimidation used to cause the said witness to testify falsely." Is this statement a denial or merely a conclusion?

Is this stock form of affidavit a denial that the witness was called a liar, and threatened with a charge of perjury? Who told the Grand Jury that these two ladies were apparently "interested and hostile witnesses?" Is it not strange that the only two witnesses appearing against the charges brought were called "hostile" by this Grand Jury? Were all the other witnesses disinterested and friendly? Are Grand Jurors supposed to investigate with an open mind? Do these statements in these affidavits establish conclusively that they were fixed—that this matter was determined; that this hearing was merely a formality?

Why was it one of the leading attorneys of Detroit, who was called before the Grand Jury, was not called to testify upon the trial? Was it because it had become known that I had his letter to a member refuting his reported statement before the Grand Jury? Well, I cannot call him to account. He has gone before the Last Tribunal.

Was the removal of the lady member of the organization in the custody of an official, at the psychological moment, to obliterate from the minds of the jury the effect of her testimony, and to impress upon their already entrammeled minds, that she was "Interested and hostile?"

The strongest retraction of all three jurors was one made by a juror named Fred G. Whines, 5708 Forsyth St., Detroit, Michigan, who signed an affidavit for me both as affiant and as notary, requiring the investigator to go back for the necessary correction.

Do you believe a man or woman who has solicited the government's call for jury service, will oppose that government when its representatives indicate an indictment is wanted?

Do you believe that a man who is associated with any business forbidden under our law, such as a speak-easy, would dare oppose the will of government representatives?

Do you think any man who would make a sworn statement one day, and retracts it the next, capable of unbiased, uninfluenced judgment, or is he more likely to do anything the authorities demand of him?

Do you believe now, in the face of all these facts, that the Grand Jury sitting in my matter brought in a true bill, uninfluenced and untrammeled?

Pending all these investigations, a motion for a Bill of Particulars, filed by me, returnable July 2nd, 1928, was still not argued, and upon inquiry I was informed that it was awaiting a date for argument to be fixed by Judge Tuttle. This motion, in fact, was never argued.

My attorney informed me, when I called him on the phone from the court house, that Judge Tuttle had telephoned down from Bay City to hold this motion until he could hear it; that he would fix a date for the argument on his return. I asked him if he would notify me so that I could attend the hearing and he answered me in the affirmative.

In the Law Reporter for September, 1839, appears the following:

In the course of his opinion Judge King remarked that:

"Any citizen, be he humble or lofty, who has lived a life of unsuspected integrity in the community has the fair right to require of an examining tribunal, that before he is to be arraigned as a felon, at the bar of criminal justice, reasonable preliminary proof of his guilt should be adduced. A mere binding over to answer for a crime, is a thing very flippantly talked of even by professional men; but common sense and observation show that such a result never fails, where the charge is infamous, in inflicting an injury on the feelings and fame, which is rarely if ever healed."

TABLE OF CONTENTS

Part One

Anneke Jans and Her Farm

CHAPTER ONE

	Page
Anneke Jans	1

CHAPTER TWO

The Bridge	5
War	5

CHAPTER THREE

Bogardus versus Trinity	7
Lovelace Transcript	7
The Letter and Certification	13
Queen Anne Grant	17
Annulling Act	17
Signature to Grant	60
Description	64
Boundaries and Location	67
Statutes of Limitations	102
Revolution	123
Treaties	127
Possession	130
Sixty Years	131
Broadway from Vesey to Duane Street	138
Leases, Payment of Taxes, Partitioning	138
Water Lots	142
Constructive Trust	142
Complainants' Testimony	149
Why?	153

CHAPTER FOUR

American Period	154
State Grant	154
Inviolability of Grant	161

BAY OF NEW YORK

(From the Narrows)

CHAPTER FIVE

Inseparable Trinities - - - - - - - - - - - 178

Part Two

Indictment—Conviction—Sentence

Page

Introduction - - - - - - - - - - - - 182

CHAPTER SIX

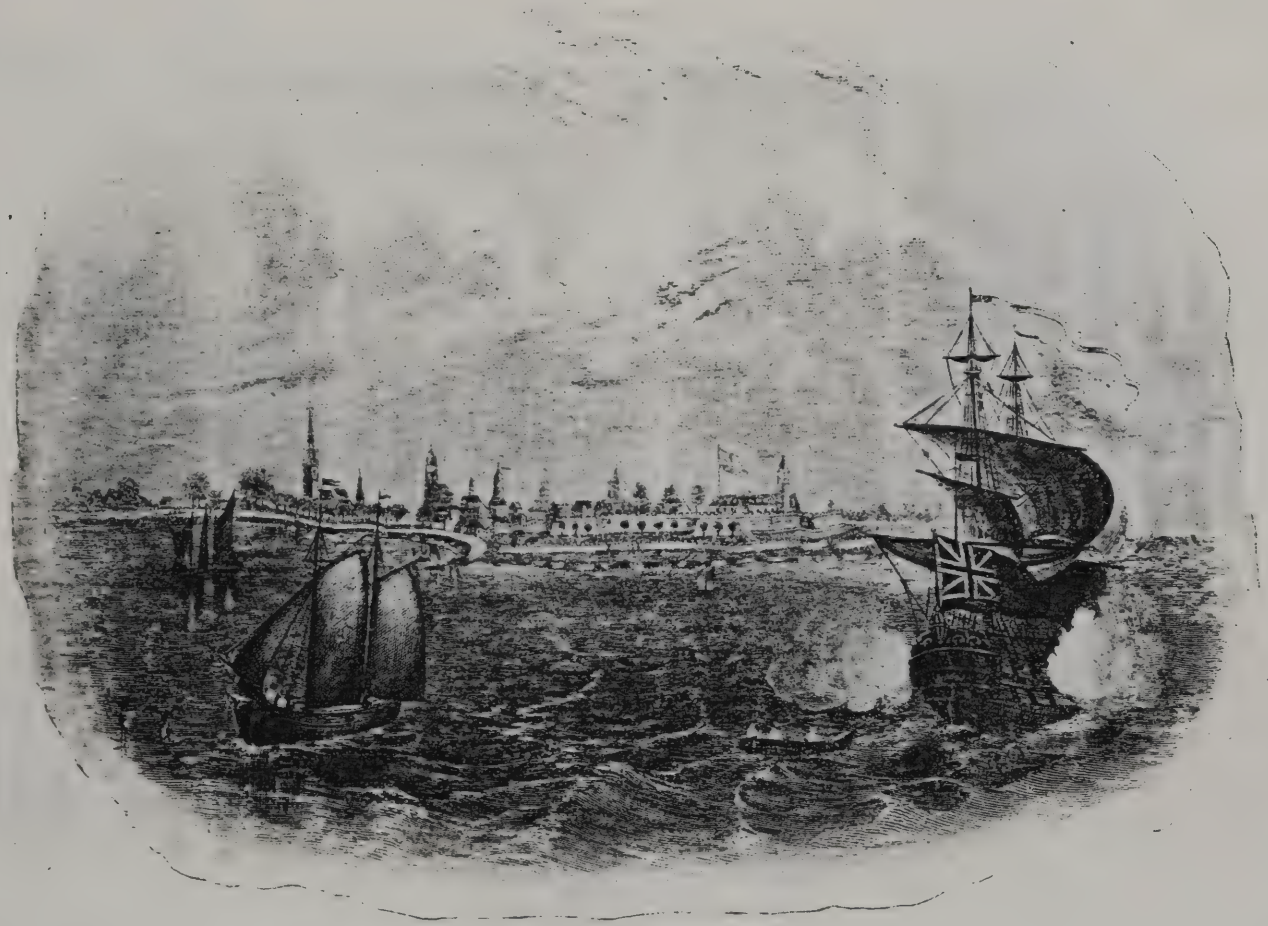
Indictment - - - - - - - - - - - - 188
Validity - - - - - - - - - - - - 201
Grand Jury Proceedings Secret - - - - - - - - 203
Hostility - - - - - - - - - - - - 205
Transcript of Record - - - - - - - - - - - 206
Grand Jurors - - - - - - - - - - - 246
The Charges - - - - - - - - - - - 248

CHAPTER SEVEN

Public Talks on Reasons for Consenting to Publish the Book - 252
Lenape Park, Pa., August 1923 - - - - - - - - 252
Flint, Michigan, September 1923 - - - - - - - - 261
Jackson, Michigan, September, 1923 - - - - - - - 263
Community Hall, February 2, 1925, Detroit, Michigan - - - 265
Chicago, May 7, 1925 - - - - - - - - - - 267
Chicago, October 24, 1926 - - - - - - - - - 269
Milwaukee, Wisconsin, July 19, 1926 - - - - - - - 270
Lenape Park, Pa., 1924 - - - - - - - - - 272

CHAPTER EIGHT

Trial - - - - - - - - - - - - - 274
Traverse or Petit Jury - - - - - - - - - 276
Testimony - - - - - - - - - - - - 281
George Murray Roat - - - - - - - - - - 286
Thomas Grover - - - - - - - - - - - 301
Robert Jones - - - - - - - - - - - 310
Samuel A. Booth - - - - - - - - - - - 340
Ida Foster - - - - - - - - - - - - 356



NEW YORK IN 1775.
(Fort George from the Harbor.)

Hannah Grow Lutz - - - - - - - - - - 359
Wilkes-Barre National - - - - - - - - - - 395
Present Organization - - - - - - - - - - 397
Entrapment - - - - - - - - - - - - 399
Question - - - - - - - - - - - - 399
Future Performance - - - - - - - - - - 399
John C. Price - - - - - - - - - - - 400
John W. Page - - - - - - - - - - - 414
Retrospection - - - - - - - - - - - 419

Disbarment

Page
Introduction - - - - - - - - - - - - 423

CHAPTER NINE

Retainer - - - - - - - - - - - - 430
Conditions - - - - - - - - - - - - 431
Calligari Affidavit - - - - - - - - - - 432
A Public Record - - - - - - - - - - - 441
Petition to Legislature - - - - - - - - - - 476

Appendix

Number Page
1 Governor Stuyvesant's Grant to Anneke Jans Bogardus - 495
2 Will of Anneke Jans Bogardus - - - - - - 496–498
3 Governor Nicolls' Confirmatory Grant to the Children and Heirs of Anneke Jans - - - - - - - - 499
4 Queen Anne Grant to Trinity - - - - - - - 501
5 The Lovelace Transcript - - - - - - - - 505
6 Bogardus vs. Trinity, Rep. 4 Sandford - - - - - 506
7 Humbert vs. Trinity, Rep. 24 Wendell - - - - - 546
8 Governor Fletcher's Lease to Trinity - - - - - - 562
9 Charles the Second's Grant to Duke of York - - - 564
10 Duke of York's Commission to Governor Nicolls - - - 566
11 The Indictment - - - - - - - - - - - 567

"A Line or Two in Verse" - - - - - - - - - - 575

BATTLE OF HARLEM.

Maps—Plates—Illustrations

Plate		Page
1	City of New York in 1790	Frontispiece
2	Anneke and Everhardus Bogardus	1
3	Sketch of Bogardus Farm, Showing Company's Farm, and Old Jans Land, Published by the City of New York Common Council	2
4	Copy of Map in Register's Office Showing Company's and Bogardus Farms	4–5
5	History of Jans Celes	4
6	Title Page Records of New Amsterdam Court Minutes of New Amsterdam, Vol. VI	10
7	Court Minutes of New Amsterdam	12
8	Genealogy of the First Settlers of Albany, Showing Death of Peter Hartgers	14
8a	Lord Cornbury	34
8b	An 1820 New York Skyscraper	59
9	Letter from State Archivist re Office of Deputy Secretary	62
9a	A Cornbury Autograph	63
10	Printed Copy of Queen Anne Grant, Furnished by Trinity Church to Author	60–61
11	Parchment—by Governor Lovelace	62–63
12	Map Published by Historian J. H. Innes of Early New York	66–67
13	Map Read on Hearing of Bogardus versus Trinity—by Maerschalk	64–65
14	Twin Map to Plate 13	64–65
15	View of Buildings in City Hall Park, 1809	70
16	View of the Stone Bridge and Tavern, Canal and Broadway, 1812	75
17	Map of Shoemakers' Land	76
18	Map of Collect Pond	76–77
19	Map of the Lower End of Manhattan	78–79
20	View of Kalck and Kalckhook Pond	86
21	View of the Junction of Pearl and Chatham Streets in Year 1861	87
22	Sketch of Kalckhook at the Close of the Revolutionary War, 1782	88
23	View of Rutger's Mansion, 1768	92
24	Old View of Murray Street, New York, 1822	95
25	View of Vauxhall Gardens, 1803	98
25a	View of Lispenard Meadows, 1785	99
25b	View of New York from the North	100
26	Plan of City of New York, Showing Made and Swamp Land	101
28	Petition of Cornelius Bogardus, re Burning of His Fences, December 27, 1773	104
29	Second Page of Above Petition	105
30	Petition of Cornelius Bogardus re Burning of His Fences, and His Right to Sue	106

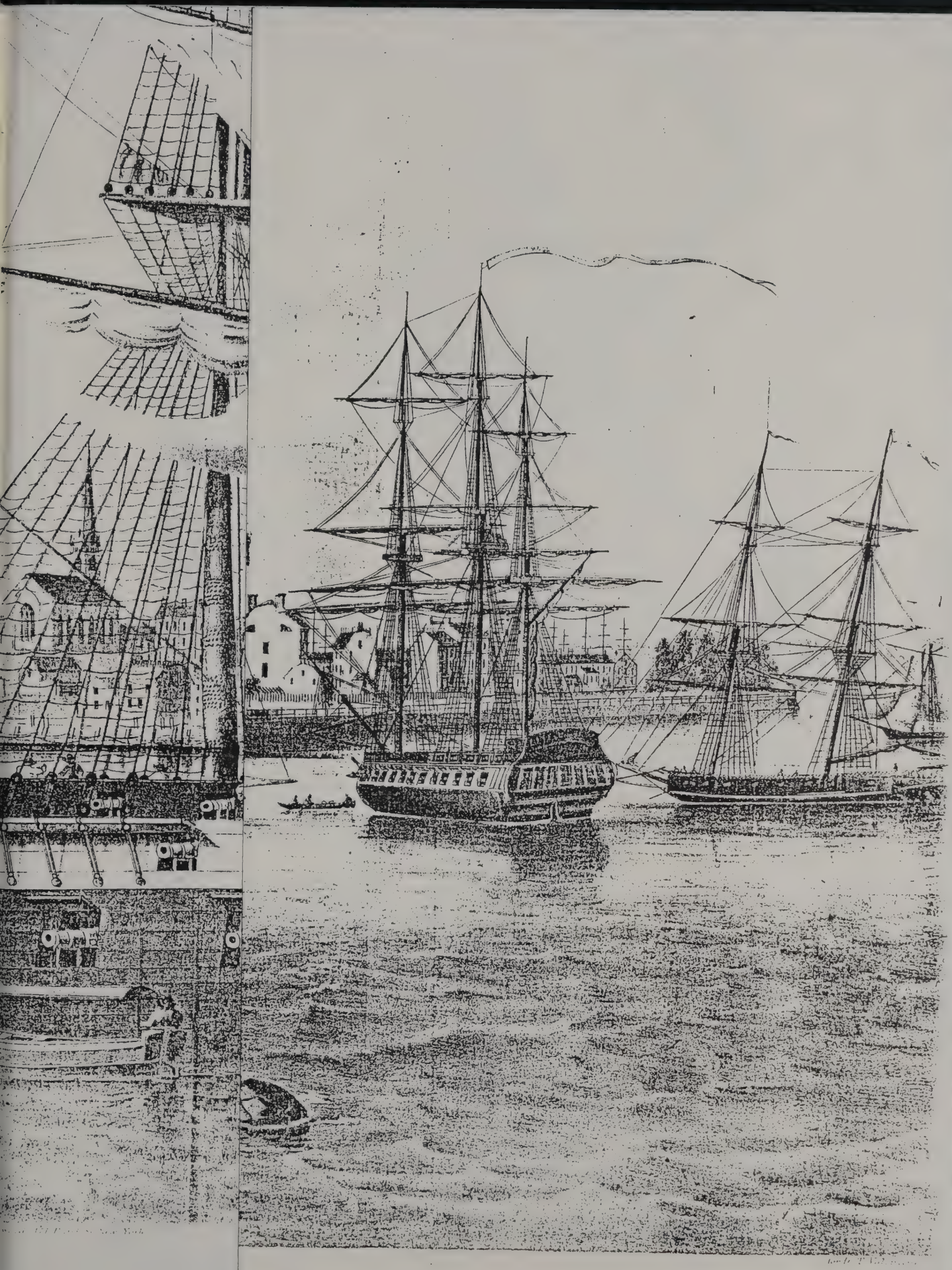
ALBANY, FROM VAN-UNSSELAERS ISLAND

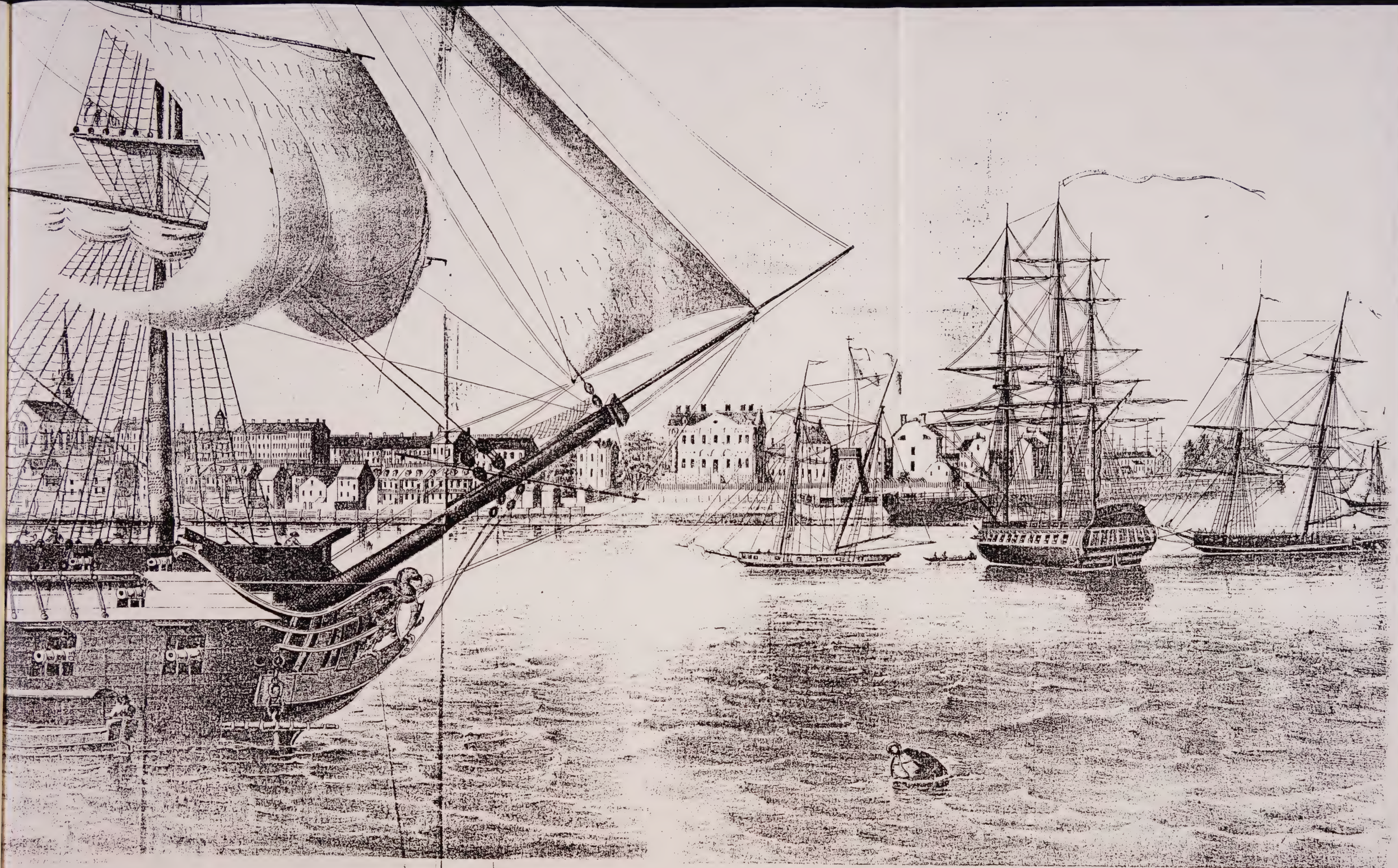
Plate		Page
31	Second Page of Above Petition	107
32	Third Page of Above Petition	108
33	Fourth Page of Above Petition	109
34	Maerschalk Map—"Copy of Original in Possession of Trinity Church," 1755	122–123
35	Lyne Map—Published in 1728	126–127
36	Ratzen Map—Published in 1767	130–131
37	Hill Map—Published by J. Disturnell	134–135
38	View of White Conduit House	133
39	Key Map of New York Farms	136–137
39a	Keys to Map of New York Farms	135–136
40	Plan of the City of New York and Its Environs, 1742, 1743, 1744, Drawn by D.... G....	138–139
41	Minutes of the Common Council	140
42	Minutes of the Common Council	141
43	Advertisement by Trinity Church, "Lot for Sale, Located on Jan Celes Farm"	137
43a	Kissing Bridge on the Old Boston Road in 1860	153
43b	Peter Minuit Purchasing Manhattoes from Indians	177
44	Old Receipts Showing Conditions Under Which Money Accepted 1914-1917	178–179
44a	The Gates Ajar	181
45	City Hall of Dutch West India Company	185
45a	View of Broadway in 1834	186
46	Membership Pledge	187
47	Questionnaires, John W. Page, William Drew, W. J. Tomkins and Florence Tomkins	199–200
48	Questionnaires, Hannah Lutz, Jessie Blanchard, William and George Conine	210–211
49	Questionnaires, Iza Bellinger, Ida Horning, Isabel Turner, C. D. Munger	220–221
50	Pledges, Hannah Lutz, William Drew, Isabel Turner, Harmon Blue, Iza Bellinger, John Tunnison, Jessie Blanchard, William Conine, Harold VanWie	230–231
51	Advance Book Subscriptions, William Drew, Iza Bellinger, C. D. Munger, Ida Horning, Harold VanWie	241–242
52	Advance Book Subscription by John W. Page	250
53	Back of Advance Book Subscription	251
53a	Final Accounting to Wilkes-Barre National	253
53b	Christ in the Garden of Gethsemane	273
54	Letter, Roat to Gridley	282, 283, 284
55	Gridley's Resignation from Wilkes-Barre National	285
56	Letter, Jones to Booth, August 8th, 1922	312
57	Letter, Jones to Newell, October 12th, 1922	313
58	Letter, Jones to New York, July 6th, 1923	314–315
59	Letter, Jones to New York, July 11th, 1923	315
60	Letter, Jones to Members of Wilkes-Barre National, July 24, 1923	316
61	Letter, Jones to New York, August 3rd, 1923	317

STAATEN-ISLAND

Plate		Page
61b	Hanging of Negro on Commons - - - - - -	318
62	Letter, Jones to Hannah Lutz, August 7th, 1923 -	319
63	Letter, Jones to New York, August 24, 1923 - -	320
64	Letter, Jones to S. A. Booth - - - - - -	321
65	Letter, Jones to Hannah Lutz, August 30, 1923 -	322
66	Letter, Jones to New York, October 3, 1923 - -	323
67	Letter, Jones to New York, October 10, 1923 - -	324
68	Letter, Jones to Sam Booth, February 6, 1928 -	325–326
68a	View in New York in 1746 - - - - - - -	358
69	Letter, Hannah Lutz to Robert Jones, September 26, 1923 - - - - - - - - - - -	360
70	Letter, Hannah Lutz to G. Murray Roat, May 17, 1924	361–362
71	General Letter by Philadelphia Society, November 10, 1923 - - - - - - - - - - -	363
72	Resolutions Passed by Philadelphia Society, November 29, 1924 - - - - - - - - - - -	364
73	Letter, Hannah Lutz to Lillian Fathers, February 20, 1924 - - - - - - - - - - -	365
73a	The First House Lighted by Gas in New York, 1825 -	366
74	Letter, Hannah Lutz to G. Wright, August 15, 1924 -	367
75	Letter, Hannah Lutz to New York, December 20, 1925	368–369
76	Letter to John W. Page from Hannah Lutz, March 18, 1926, in regard to new plan for bringing suit in substitution of book plan - - - - - -	370–377
77	Letter from H. M. Hoover to Mrs. Lutz, June 8, 1926 -	378
78	Affirmation by Charles Falck - - - - - -	379
79	Letter, Mrs. Warren to W. T. Gridley, October 7, 1924	400
80	Letter, Mrs. Warren to Mrs. J. C. Price, October 7, 1924	401
81	Letter, W. T. Gridley to Mrs. Warren, November 20, 1924 - - - - - - - - - - -	402–405
82	Letter, John C. Price to Norris and Warren, November 22, 1924 - - - - - - - - - - -	406
83	Letter, John C. Price to New York, November 28, 1924	407–408
84	Letter, Will Caine to E. A. Ennest, May 21, 1928 -	409
85	Envelopes—Price to Caine - - - - - - -	410
86	Letter, John C. Price to Wm. Caine, June 6, 1928 -	411
87	Letter, John C. Price to Wm. Caine, November 12, 1928	412
88	Letter, Page to Mrs. Conn, April 29, 1926 - - -	413–414
88a	Letter, Page and Drew to Mrs. Case, January 11, 1926	414
89	Resolutions Passed by Detroit Society, December, 1924	415
90	Memorandum to Organization, October 9, 1925 - -	416
91	Letter to Officers of Milwaukee Society, July 22, 1926 -	417
92	Resolutions Passed at Gull Lake, August 13, 1925 -	418
79	Retainer Form Used, 1914-1917 - - - - - -	430
80	Conditions Printed on Back of All Letters, 1914-1917 -	431
81	Affidavit of Informant, Alexander Calligari - -	432–440
82	Mrs. Schuyler Firing Her Cornfields on Approach of the British - - - - - - - - - -	493
83	View of Corner of Broad and Garden Streets - -	498
84	View of Old Buildings in Williams Street - - - -	565
85	An Indian Village of the Manhattans - - - -	566
86	Old House, N. Y., 1849 - - - - - - - -	573

PART ONE





NEW YORK, ABOUT 1799.

Pub. by J. Pelton, 81 Nassau St. New York.

ANNEKE JANS AND HER FARM

Lives of great men, all remind us
We can make our lives like theirs,
And departing, leave behind us,
Lawsuits to enrage our heirs!

CHAPTER ONE

Anneke Jans

Plate Two

IT IS not necessary for the purpose of this book, to go deeply into the history of Anneke Jans. Our chief concern is the acquisition by Anneke and Roeloff Jans, her first husband, of the farm on Manhattan Island, consisting of sixty-two acres, and the passing out of the title to those lands.

Anneke Jans was married in Holland, and came to America with her husband and two small children on the ship "Eendracht" in the year 1630. Anneke was a very pretty woman, so history records, with brilliant complexion, and very pleasing manners. Historians give more prominence to Anneke's children than to her in the sixteen hundreds, and it was not until Anneke passed away, and left the now famous piece of property to her children and heirs, that her name loomed up in history, and the Bogardus descendants have seen to it that it has remained one of the most prominent of the old Dutch names.

It has been said that Anneke was of royal blood, but if that be true, certain it is Anneke herself made no such claims. It is recorded that she was the daughter of Tryntje Jonas, an official nurse for the Dutch West India Company; that she had a sister Marretje, who eventually became one of the first ladies of Manhattos. However humble Anneke's origin, some of the first families of the land trace their genealogy back to this little Anneke of ours.

Roeloff Jansen's first work in the new world was head farmer for Killaen VanRenssalaer, whose colony was up the Hudson where Troy and Albany now are situate. It was called Renssalaerwyck.

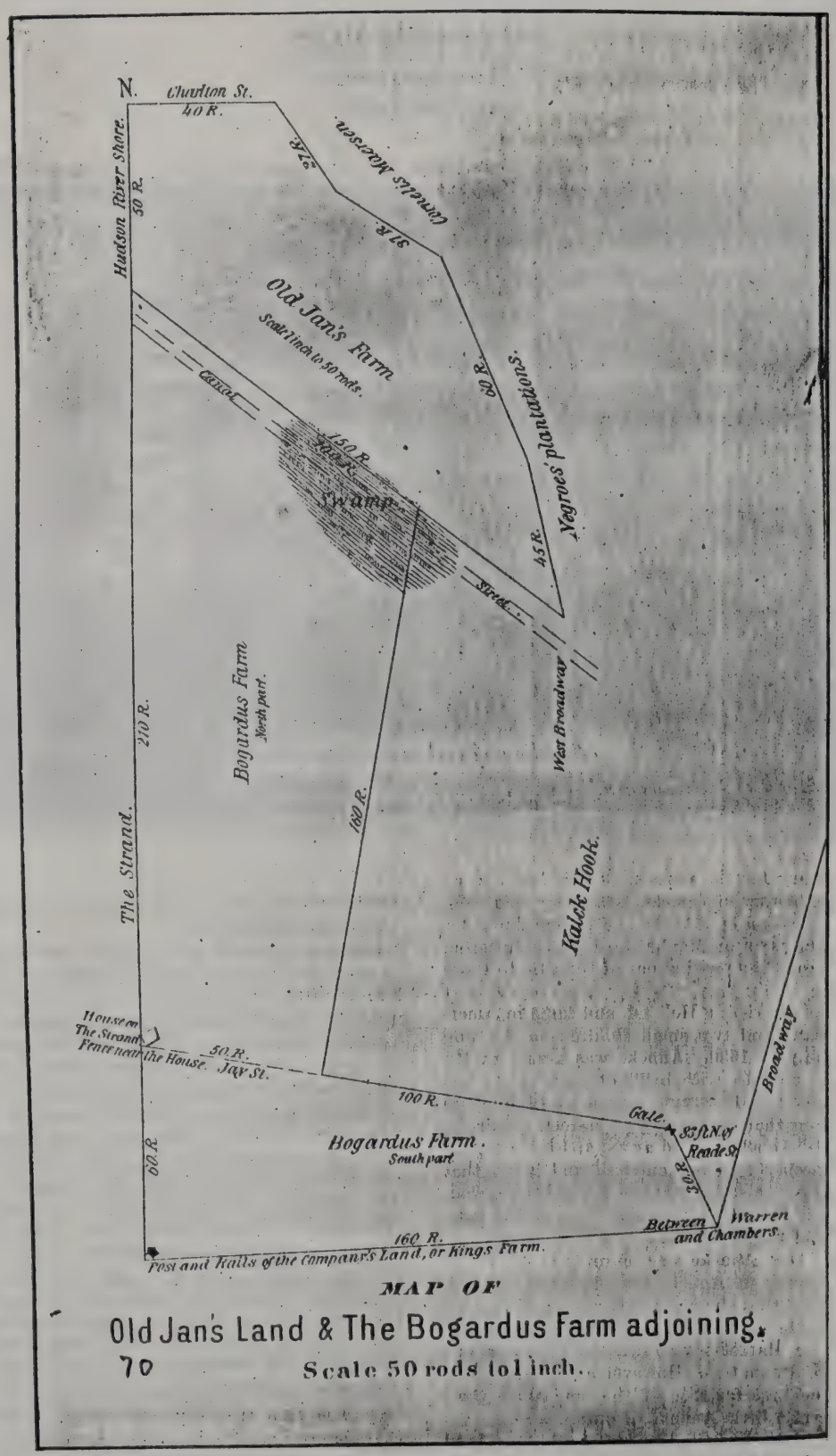
When Roeloff had served out his allotted time with VanRenssalaer, in about the year 1635, he again packed up his goods and accompanied by his family set sail, this time down the Hudson to the Island of Manhattos, where he was granted a farm by the Dutch Director General VanTwiller. A certified copy of this grant is unobtainable, though it is mentioned in histories and in subsequent grants.

Plate number three is a sketch published by the Common Council of the City of New York in its Manual for the year 1870, from which you will see the relative locations of the different farms mentioned, the Company's Farm, which upon the surrender of the Dutch was confiscated and became known as the Duke's Farm, King's Farm, Queen's Farm, the Bogardus Farm, and Jan Celes Farm.

Plate number four is a copy of a map on file in the Register's Office of the County of New York, showing that the Anneke Jans Bogardus farm directly adjoined on the south one of the Dutch West India Company farms or bouweries, and on the north "Old Jans Land" as it was then called, a farm belonging to Jan Celes, both of these farms being referred to in the grants of the Bogardus farm.

The southern line of the Bogardus Farm started somewhere in the neighborhood of Chambers Street, and ran northwardly to Canal Street.

Plate Three


N.
Charlton St.
40 R.
Hudson River Shore.
50 R.
Cornelis Meersen
97 R.
97 R.
Old Jan's Farm
Scale 1 inch to 50 rods.
Canal
150 R.
Swamp
60 R.
Negroes' plantations.
45 R.
Street
West Broadway
Bogardus Farm
North part.
270 R.
The Strand.
180 R.
Halck Hook.
House on The Strand
Fence near the House.
50 R.
Jay St.
100 R.
Gate.
83 ft. N of Reade St.
Broadway
Bogardus Farm.
South part
60 R.
30 R.
Between Warren and Chambers.
160 R.
Post and Rails of the Company's Land, or Kings Farm.
MAP OF
Old Jan's Land & The Bogardus Farm adjoining.
70
Scale 50 rods to 1 inch.

Roeloff did not live long to enjoy the fruits of his labors on his Manhattan Island farm, for he died in 1637. Anneke was then courted and won by the irrepressible Dominie Bogardus, who came to America in the year 1633.

Janvier, the historian, gives the finest description of Bogardus. He says: "He was a resolute brainful man, took from the first a leader's part in the affairs of New Amsterdam (another name for New Netherlands, later Manhattan Island). He also won in due course of time the heart and hand of one of the town's richest women. This was Annetje, the widow of Roeloff Jansen, more commonly called Anneke Jans. Their marriage brought Bogardus wealth and greater influence, and enabled him to live in a comfortable house, which stood on the corner of the present Whitehall and Bridge Streets. (This is no part of the Bogardus Farm.) The Dominie preached with vigor on Sundays, and on week days kept a watchful eye on civic affairs. Many of VanTwiller's acts failed to meet with his approval, and when the former resented the criticisms with such spirit as he could command, Bogardus, who believed in dealing knockout blows, denounced him from the pulpit as a child of the devil, and a consummate villian."

Anneke Jans married Dominie Everhardus Bogardus in the spring of 1638.

In March, 1638, William Kieft was chosen Governor of New Netherlands, and Kieft and the Dominie Bogardus were soon about as good friends as were Bogardus and VanTwiller, and the same accumulation of epithets were hurled at Kieft as were hurled at VanTwiller. After much wrangling, peace was restored between the two, or rather patches were put on the sore places, and a truce was declared.

In July, 1647, Kieft, and several others, among whom was the intrepid Dominie, no doubt holding on to his own opinion of the right of things with a tenacity of purpose worthy a better cause, sailed on the good ship "Princess" for Holland. The Dominie was going to lay the facts before the officials of the Dutch West India Company, and as well transact some business for his wife. Well, "Man proposes and God disposes." The ship after safely weathering the stormy English Channel, was wrecked on the coast of Wales, where Bogardus, Kieft and about eighty others lost their lives.

Thus Anneke was again a widow.

Anneke had four children by Roeloff Jans, and four by Dominie Bogardus. Anneke Jans and Roeloff Jans had the following children: Sara, Catrina, Sytie or Fytie, and Jan. By her second husband, Dominie Bogardus, she had Willem, Cornelis, Jonas and Pieter.

After the death of Bogardus, Anneke evidently felt the urge to spend her closing days mid the scenes of her first sojourn in the new world. She went back to Beverwyck, now Albany, where she died in 1663.

The following is an excerpt taken from the "Albany Rural Cemetery" written by Henry P. Phelps:

"The octagonal sandstone, tall and shapely, erected by Blandina Dudley to Charles E. Dudley in 1863, is interesting for several reasons. Mr. Dudley, who died in 1841, aged 60, was Mayor of Albany in 1821-4 and 1828-9. He was also State and United States Senator. His wife, Blandina, daughter of Rutger Bleeker, from whom she inherited great wealth, founded the Dudley Observatory in 1852, giving $105,000 to that object, which also found a warm friend and helper in Mr. Thomas W. Olcott.

"The monument has a special interest to the Anneke Jans claimants, who, at one time, were active in their efforts to obtain untold millions from Trinity Church, in New York City. Among several inscriptions are the following, the one in relation to Anneke Jans having been carefully copied many times, as part of the celebrated case:

> "Under the Middle Dutch Church in Hudson Street are deposited the remains of our ancestors, taken from the old church in State Street. Among them are those of Anneke Jantz Bogardus, Jan Jansen Bleeker and Rutger Jacobson, who laid the cornerstone of the old church above named A. D. 1656.
>
> "Jan Jansen Bleeker, came from Meppel, Province of Overyssel, Holland, to America A. D. 1658. Married Margaret daughter of Rutger Jacobson, and granddaughter of Anneke Jans Bogardus, 1667. Mayor Albany A. D. 1700. His son John succeeded him as Mayor, Albany 1701. His son Rutger was Mayor of Albany, A. D. 1726-27-28.

As stated the first grant by VanTwiller is unobtainable. In 1654, Director General Peter Stuyvesant gave a confirmatory grant of the lands of Manhattan Island to Anneke Jans Bogardus.[1]

Anneke Jans Bogardus died in 1663, leaving a will dividing all her property between the children then living and two grandchildren, children of her deceased daughter Fytje, who married Peter Hartjers VanWie, who died in Holland in the year 1670. (This plate is on page 14.)

In 1667 the English Governor Nicolls, confirmed the grant of this farm to the children and heirs of Anneke Jans Bogardus.[3]

I deem this sufficient to make you acquainted with Anneke Jans and her farm, for it was not little Anneke who made her name so famous in history. It was this farm of sixty-two acres, which was granted to Anneke and Roeloff by VanTwiller, which, without doubt, is the most world-renowned piece of property on Manhattan Island. Renowned? Aye, I will venture to say, without fear of contradiction, that there has been no peaceable or undisputed possession of this piece of property by the present holder, Trinity Church, for the firing started in 1760, when Cornelius Brower, a descendant, brought the first suit. Later, December 27th, 1773, Cornelius C. Bogardus, another descendant, brought a petition for redress for trespass committed, by burning his fence and timber. Since this time intermittent attempts have been made to make Trinity Church pay the price for the breaking of those commandments.

Sometime in the year 1833, when the now famous case reported in 4 Sandford was brought, a certain paper writing was presented for the first time, which purported to be a sale of this Bogardus Farm by the children and heirs of Anneke Jans Bogardus to Governor Francis Lovelace.[5] This paper will be analyzed in a later chapter.

With God's permission at a later date more of interest concerning the life of Anneke Jans and her family will be written.

Anneke is peacefully sleeping beneath the church in Hudson Street, but that strong Dutch determination which she gave to her children has passed down through the generations, and is as strong today, as in the days when that little band of pioneers laid the foundation for free America.

OLD JAN'S LAND.

BY E. B. O'CALLAGHAN.

"I have been unable to find how Jan Celes, called Old Jans, got his title, or the extent of his possession. * * * Whoever will find out who Old Jans was, and the land owned by him, and how he got and parted with it, will deserve the thanks of every New York antiquarian."—*Hoffman's Estate and Rights of the City of New York*, Vol. 2, p. 201.

When the English questioned the title of the Dutch to any part of this country, the latter pointed to divers rivers and localities which bore their names, and alleged the circumstance as proof of prior discovery and possession. To this the English simply replied, that these parts had been previously discovered by their countrymen, and that the Hollanders came afterwards and "dutchified" the names. They treated "Old Jans" in the same way. They "dutchified" his name.

JOHN SEALS was an Englishman, and probably came to the New Amsterdam from New England. He is found as a planter on the Island of Manhatan in 1638, and was, without doubt, here earlier. He married Maria Roberts or Robertson, and they had a daughter named Femmetje, or Phœbe, who married Teunis Nyssen, 4th February, 1640.

In his latter days, Seals seems to have become irritable, and as a consequence he figures in court on charges of shooting his neighbors' hogs, or committing other damages. It is in one of these suits that we obtain the first clue to the location of "Old Jan's Land."

In 1643 several cattle belonging to the government strayed in the woods, and messengers were despatched to look them up. "When they had come to Old Jans plantation by the swamp, they saw that the woman residing on said Old Jans plantation had driven with a goad the cattle into said swamp, so that they sunk into it over their backs; but as they were strong and well in flesh, they finally got through the morass."

The swamp here mentioned was one of the outlets of the Fresh Water Pond, in the rear of the City Hall; it covered the land now occupied by the lower part of Canal street, and was afterwards known as part of Lispenard meadows. It is important as an ancient landmark, and as determining the northern boundary of the Bogardus Farm, now in the possession of Trinity Church.

Death, a couple of years after, laid his hand on Old Jan. He had received a wound, under what circumstances is not stated, and made a will, of which the following is a translation:—

"On the seventh of April, in the year of our Lord and Saviour Jesus Christ, One thousand six hundred and forty five, before me, Cornelis Van Tienhoven, secretary New Netherland, appeared *John Celes*, who being wounded and lying abed, but in full possession of his memory and understanding, in the presence of the underwritten witnesses, declared that he, reflecting on the certainty of death and the uncertainty of the hour thereof, commends his soul, after his death, into the hands of Almighty God, and his body to a christian burial; wishing, then, to anticipate all such uncertainty of death by testamentary disposition, and coming to his means and effects, declares it to be his last Will, that after his death, Tonis Nyssen, his son in law, shall take out of the estate the just half of all the means and effects which he will happen to leave behind. Marritje Robers, his wife, shall take the other half, and have the usufruct thereof until she marry or die, provided that in case she remarry, the property shall not be conveyed, diminished or alienated by her husband or herself, but be only used, so as to receive the interest thereon during her life and the capital remaining intire, shall revert, after her death to Tonis Nyssen, or his children or heirs, without her Marritje Robberts's

friends receiving any of the property, only she shall have power to leave by Will two hundred guilders out of said estate to whomsoever she pleases. He, *John Celes*, requests in the presence of all these bystanders that this may take effect after his death as his last Will before all courts, tribunals and judges.

Done on the day and year aforesaid

This is the signature of JAN SEALS
made by himself.

THOMAS HALL."

John Seals died soon after executing the above will, and in August following his widow married one Thomas Gridy, a native of Devonshire, England, then sixty years of age, who afterwards lived at Gravesend, L. I., got into trouble in connection with George Baxter in 1656, and was sentenced to be banished the Province for twelve years.

Meanwhile, Tonis Nyssen, the son-in-law, became administrator of the estate, and obtained a grant or patent of "Old Jans Land." As this instrument is important, determining the location and extent of the plantation and solving the points which Judge Hoffman wished to have cleared up, we give a translation of it.

"We, WILLIAM KIEFT, director general and the Council in New Netherland residing on behalf of the High and Mighty Lords States General of the United Netherlands, his Highness of Orange and the Honble Lords Directors of the Incorporated West India Company, hereby acknowledge and declare that We, on this day date underwritten, have given and granted to *Tonis Nyssen* a plantation situate on the Island of Manhatan, formerly occupied by the late *Jan Celes*. It extends on the south side from the land and valley belonging to Everhardus Bogardus, minister, and on the north side to Cornelis Maersen, thence along the Negroes' plantations to the Cripple bush of said Bogardus. It runs in breadth along the strand fifty rods, from the strand along the Cripple bush south east by east one hundred and fifty rods, along the Cripple bush to the Negroes' land it stretches east by south five and forty rods, along the Negroes plantations upwards north northwest sixty rods, towards the strand downward north west by west thirty seven rods, along the Cripple bush of Cornelis Maersen it runs north west by north twenty seven rods, along the Cripple bush up to the strand westerly forty rods. With express condition, &c.

In testimony this is signed by us and confirmed with the seal. Done in Fort Amsterdam in New Netherland, the 3^d April 1647.

(Signed) WILLIAM KIEFT,

By order of the Honble Director General and Council of New Netherland.

(Signed) CORN. VAN TIENHOVEN, *Secretary*."

On the 11th June, 1651, Teunis Nyssen conveyed the above described land to Augustyne Heermans, who again sold it on the 11th May, 1655, to Rut Jacobsen, of Fort Orange.

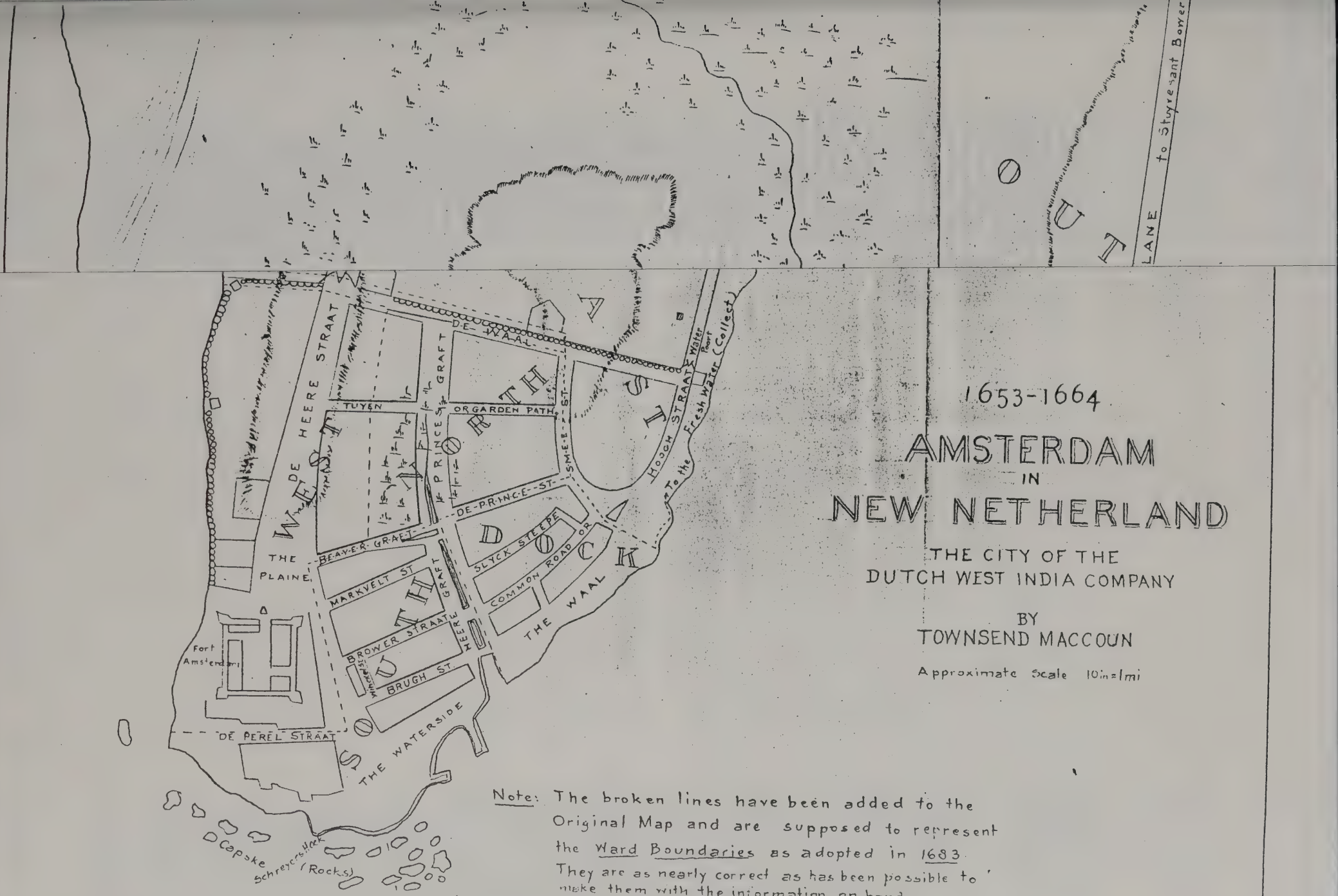
We did not propose, at setting out, to trace the title to this land down to the present time. Our object was only to tell who Old Jan was, to locate his farm, and to show how he parted with it.

In order to illustrate the matter more clearly, we supply a reliable diagram of the farm, and of the Bogardus farm adjoining, of the patent for which we also subjoin a translation.

PATENT TO ANNETIE JANS.

PETRUS STUYVESANT, Director general of New Netherland, Curaçao and the Islands thereof, on the behalf of their Noble High Mightinesses the Lords States General of the United Netherlands and the Honble Directors of the Incorporated West India Company, together with the Honble councillors, declare that We, on this day, date under-

TRINITY
BREAK YE MY COMMANDMENTS?



Note: The broken lines have been added to the Original Map and are supposed to represent the Ward Boundaries as adopted in 1683. They are as nearly correct as has been possible to make them with the information on hand.

OLD JAN'S LAND.

BY E. B. O'CALLAGHAN.

"I have been unable to find how Jan Celes, called Old Jans, got his title, or the extent of his possession. * * * Whoever will find out who Old Jans was, and the land owned by him, and how he got and parted with it, will deserve the thanks of every New York antiquarian."—*Hoffman's Estate and Rights of the City of New York*, Vol. 2, p. 201.

When the English questioned the title of the Dutch to any part of this country, the latter pointed to divers rivers and localities which bore their names, and alleged the circumstance as proof of prior discovery and possession. To this the English simply replied, that these parts had been previously discovered by their countrymen, and that the Hollanders came afterwards and "dutchified" the names. They treated "Old Jans" in the same way. They "dutchified" his name.

JOHN SEALS was an Englishman, and probably came to the New Amsterdam from New England. He is found as a planter on the Island of Manhatan in 1638, and was, without doubt, here earlier. He married Maria Roberts or Robertson, and they had a daughter named Femmetje, or Phœbe, who married Teunis Nyssen, 4th February, 1640.

In his latter days, Seals seems to have become irritable, and as a consequence he figures in court on charges of shooting his neighbors' hogs, or committing other damages. It is in one of these suits that we obtain the first clue to the location of "Old Jan's Land."

In 1643 several cattle belonging to the government strayed in the woods, and messengers were despatched to look them up. "When they had come to Old Jans plantation by the swamp, they saw that the woman residing on said Old Jans plantation had driven with a goad the cattle into said swamp, so that they sunk into it over their backs; but as they were strong and well in flesh, they finally got through the morass."

The swamp here mentioned was one of the outlets of the Fresh Water Pond, in the rear of the City Hall; it covered the land now occupied by the lower part of Canal street, and was afterwards known as part of Lispenard meadows. It is important as an ancient landmark, and as determining the northern boundary of the Bogardus Farm, now in the possession of Trinity Church.

Death, a couple of years after, laid his hand on Old Jan. He had received a wound, under what circumstances is not stated, and made a will, of which the following is a translation:—

"On the seventh of April, in the year of our Lord and Saviour Jesus Christ, One thousand six hundred and forty five, before me, Cornelis Van Tienhoven, secretary New Netherland, appeared *John Celes*, who being wounded and lying abed, but in full possession of his memory and understanding, in the presence of the underwritten witnesses, declared that he, reflecting on the certainty of death and the uncertainty of the hour thereof, commends his soul, after his death, into the hands of Almighty God, and his body to a christian burial; wishing, then, to anticipate all such uncertainty of death by testamentary disposition, and coming to his means and effects, declares it to be his last Will, that after his death, Tonis Nyssen, his son in law, shall take out of the estate the just half of all the means and effects which he will happen to leave behind. Marritje Robers, his wife, shall take the other half, and have the usufruct thereof until she marry or die, provided that in case she remarry, the property shall not be conveyed, diminished or alienated by her husband or herself, but be only used, so as to receive the interest thereon during her life and the capital remaining intire, shall revert, after her death to Tonis Nyssen, or his children or heirs, without her Marritje Robberts's

friends receiving any of the property, only she shall have power to leave by Will two hundred guilders out of said estate to whomsoever she pleases. He, *John Celes*, requests in the presence of all these bystanders that this may take effect after his death as his last Will before all courts, tribunals and judges.

Done on the day and year aforesaid

This is the signature of JAN SEALS
made by himself.

THOMAS HALL."

John Seals died soon after executing the above will, and in August following his widow married one Thomas Gridy, a native of Devonshire, England, then sixty years of age, who afterwards lived at Gravesend, L. I., got into trouble in connection with George Baxter in 1656, and was sentenced to be banished the Province for twelve years.

Meanwhile, Tonis Nyssen, the son-in-law, became administrator of the estate, and obtained a grant or patent of "Old Jans Land." As this instrument is important, determining the location and extent of the plantation and solving the points which Judge Hoffman wished to have cleared up, we give a translation of it.

"We, WILLIAM KIEFT, director general and the Council in New Netherland residing on behalf of the High and Mighty Lords States General of the United Netherlands, his Highness of Orange and the Honble Lords Directors of the Incorporated West India Company, hereby acknowledge and declare that We, on this day date underwritten, have given and granted to *Tonis Nyssen* a plantation situate on the Island of Manhatan, formerly occupied by the late *Jan Celes*. It extends on the south side from the land and valley belonging to Everhardus Bogardus, minister, and on the north side to Cornelis Maersen, thence along the Negroes' plantations to the Cripple bush of said Bogardus. It runs in breadth along the strand fifty rods, from the strand along the Cripple bush south east by east one hundred and fifty rods, along the Cripple bush to the Negroes' land it stretches east by south five and forty rods, along the Negroes plantations upwards north northwest sixty rods, towards the strand downward north west by west thirty seven rods, along the Cripple bush of Cornelis Maersen it runs north west by north twenty seven rods, along the Cripple bush up to the strand westerly forty rods. With express condition, &c.

In testimony this is signed by us and confirmed with the seal. Done in Fort Amsterdam in New Netherland, the 3^d April 1647.

(Signed) WILLIAM KIEFT,

By order of the Honble Director General and Council of New Netherland.

(Signed) CORN. VAN TIENHOVEN, *Secretary*."

On the 11th June, 1651, Teunis Nyssen conveyed the above described land to Augustyne Heermans, who again sold it on the 11th May, 1655, to Rut Jacobsen, of Fort Orange.

We did not propose, at setting out, to trace the title to this land down to the present time. Our object was only to tell who Old Jan was, to locate his farm, and to show how he parted with it.

In order to illustrate the matter more clearly, we supply a reliable diagram of the farm, and of the Bogardus farm adjoining, of the patent for which we also subjoin a translation.

PATENT TO ANNETIE JANS.

PETRUS STUYVESANT, Director general of New Netherland, Curaçao and the Islands thereof, on the behalf of their Noble High Mightinesses the Lords States General of the United Netherlands and the Honble Directors of the Incorporated West India Company, together with the Honble councillors, declare that We, on this day, date under-

TRINITY
BREAK YE MY COMMANDMENTS?

1653-1664
AMSTERDAM
IN
NEW NETHERLAND
THE CITY OF THE
DUTCH WEST INDIA COMPANY
BY
TOWNSEND MACCOUN
Approximate Scale 10in=1mi
Note: The broken lines have been added to the Original Map and are supposed to represent the Ward Boundaries as adopted in 1683
They are as nearly correct as has been possible to make them with the information on hand
OUTWARD
BOWERIE LANE to Stuyvesant Bowerie
Primitive Forests
Kalck hoek (Shell Point)
KALCH OR COLLECT
Primitive Forests
Bowerie of Annetje Jans Widow of Domine Bogardus
Tavern of Wolfert Webber
Bowerie No 6 Cornelius Jacobson Stille
Kalckhoek (Shell Point)
LITTLE KALCH
Common Lands
Jan Teunizen
Public Cow Pasture
HEEREWEGH STRAAT
Bowerie No. 5
West India Company Farm
Vlackte (The Flat) or COMMON
BOWERIE LANE
Spring
WOLPHERTS MARSH
Henry Brazier
CREPPEL BOSCH (The Swamp)
Mill
Dircksen
Ferry to Long Island
Cornelius Van Tienhoven
Henry Ryken
Abraham Verplanck
T MAAGDE PAATJE
DE SMITS VALEY or Road to Leetz
Cornelius
Isaac Allerton's Ware House
Henry Brazier
Corn Clipper the blacksmith
to the Fresh Water (Collect)
Great Highway
Land Point
HAVEN
WESTERTHOOFT
DE HEERE STRAAT
TUYEN
DE PRINCE GRAFT
DE WAAL
OR GARDEN PATH
DE PRINCE ST
SMEES ST
HOOGH STRAAT
Water Point
to the Fresh Water (Collect)
BEAVER GRAFT
SLICK STEEPE
COMMON ROAD OR
THE PLAINE
MARKVELT ST
BROWER STRAAT
BRUGH ST
THE WAAL
Fort Amsterdam
DE PEREL STRAAT
THE WATERSIDE
Capske Schreeuwer (Rocks)

CHAPTER TWO

The Bridge

We start the history of this Bogardus Farm with a grant from the Dutch Governor VanTwiller, 1636, followed with a grant by Governor Peter Stuyvesant, 1654[1] and cross the bridge into the English period upon the surrender of the Dutch to the English, in 1664. The inhabitants were compelled to look to their new landlord for a recognition of their suspended titles. Provision was made for their recognition in the Dutch capitulation of August 27, 1664, and also in the Treaty of Peace, signed at Breda, July 21-31, 1667.*

The inhabitants were permitted to surrender their Dutch titles, in exchange for confirmatory grants by the English Governor.

The children of Anneke Jans Bogardus secured a confirmatory grant from the English Governor, Nicolls,[4] March 27th, 1667, and became possessed of an English Crown Grant, securing to them the title to this sixty-two acre farm on Manhattan Island, to the sanctity of which grants the courts have made frequent reference.*

In Hooper vs. Scheimer, 23 Howard 225, (U. S. 64) decided 1859, by the Supreme Court of the United States, appears:

"That Congress had the sole power to declare the dignity and effect of a patent issuing from the United States; that a patent carries the fee, and is the best title known to a court of law."

In United States vs. Rose, 23 Howard, 262, (U. S. 64) decided in 1860, by the Supreme Court of the United States, it is said:

"We agree that every species of title that originated in the rightful exercise of legitimate authority, and existed under the safeguard of Mexican Laws at the date of the acquisition of California, by the United States, is protected by the Treaty of Cession. The change of the government does not alter the relations of the inhabitants in this particular. This court is charged with the duty, in the last resort, to recognize the validity of all such claims. But it is the duty of the court to distinguish between rights acquired under the laws and usages of Mexico, and claims depending upon the mere pleasure of those who were in power—between the vested estate and the hope or expectation of favor or bounty. The license of the governor to the applicant to make a temporary occupation, until he could inform himself, so as to act considerately or intelligently, we think, cannot be treated as conferring a property in the land."

In Stone vs. United States, 2 Wallace 525, (U. S. 69) decided 1864, by the Supreme Court of the United States:

"A patent is the highest evidence of title, and is conclusive as against the government, and all claiming under junior patents or titles, until it is set aside or annulled by some judicial tribunal."

It has been judicially determined that upon the surrender of New Amsterdam by the Dutch to the English Governor Nicolls, who, with his armed forces, asserted the right and authority of the Duke of York, and the Crown of England, the common law of England entered the province with him, and all titles were suspended subject to revival.*

It will now be seen that with the issuance of Governor Nicolls grant to the children and heirs of Anneke Jans Bogardus, we have safely bridged the early Dutch period. We have observed the effect of war upon the existing grants held by the conquered people, revived and restored by virtue of the Treaty of Peace, at the close of hostilities.

We have observed that only absolute vested titles were recognized, for, under the Treaty of Peace, the then owners were compelled to surrender their Dutch grants, before securing English titles.

War

Before venturing upon a consideration of the events covering the second period, the English period, 1664-1673,* 1674-1775, we must focus our attention, particularly, upon the events of the year 1775, that year which ushered in the most momentous epoch in American history, for, with the Declaration of Independence, the curtain fell upon the English drama. A new nation, with new laws, and a new form of government was born to its people. The colonists repudiated British rule, and launched upon our American Rebellion. Was not the very aim and purpose of the revolution to overthrow and end British injustice and oppression?

These events become of the utmost importance to a true and unbiased consideration of this matter. Does the vanquishing of the possessory or ruling power, by war, effect an instant repeal of all laws upon which all rights of every character depend? Upon the establishment of a new government, of whatever character the conquering people prescribe, do new rights spring into being, and do these rights depend, for their extent and character, entirely upon those newly created laws? Does such transfer by war change the source of all laws and government, and suspend, during the interim, all rights, pending the establishment of the incoming government? With the vanquishment of the laws of the conquered people, are such laws dead, and all rights destroyed, at an end, particularly any rights which might in futuro spring or result from mere possession?

In present day parlance, may not the question be more aptly put thus: cannot one today be entitled to inherit under existing laws, and tomorrow find such rights have ceased to exist by the mere repeal of such laws? Therefore, the one great question is, what laws existed at the time? Had any rights matured to effect a cloud upon the record title ownership of the farm in question, when the British drama closed?

The effect of the American Revolution becomes of paramount interest, when considering whether any rights had ripened into vested interests under British rule, during the British colonial period.* This question has been before the Supreme Court of the United States many times, and it seems appropriate to quote here excerpts from a very careful and exhaustive opinion in the case of Ware Admr. of Jones, vs. Hylton, 3 Dallas, 199, (U. S. 3) decided 1796:

"By the law of nations, rights and credits are not less in our power than other goods; why, therefore, should we regard the rights of war in regard to one, and not as to the other? And when nothing occurs, which gives room for a proper distinction, the general law of nations ought to prevail." * * * * * * * *

"All which prove, that not only actions, but all other things whatsoever are forfeited in time of war, and are often exacted." * * * *

"It is admitted, that Virginia could not confiscate private debts without a violation of the modern law of nations, yet

if in fact she has so done, the law is obligatory on all the citizens of Virginia, and on her courts of justice; and, in my opinion on all the courts of the United States." * * *

"If the crown of Great Britain had, according to the mode of proceeding in that country, confiscated, or forfeited American debts, would it have been permitted in any of the Courts of Westminster Hall to have denied the right of the crown, and that its power was restrained by modern law of nations? Would it not have been answered that the British nation was to justify her own conduct; but that her courts were to obey her laws."

"It appears to me, that there is another and conclusive ground, which effectually precluded any objection, since the peace, on the part of Great Britain, as a nation, or on the part of any of her subjects, against the right of Virginia to confiscate British debts, or any other British property, during the war; even on the admission that such confiscation was in violation of the ancient or modern law of nations." * * * *

"But, it is asked, did the fourth article intend to annul a law of the States, and destroy rights acquired under it?"

"I answer, that the fourth article did intend to destroy all lawful impediments, past and future; and that the law of Virginia, and the payments under it, is a lawful impediment; and would bar a recovery if not destroyed by this article of the treaty. This stipulation could not intend only to repeal laws that created legal impediments, to the recovery of the debt (without respect to the mode of payment) because the mere repeal of a law would not destroy acts done, and rights acquired under the law, during its existence and before the repeal. This right to repeal was only admitted by the counsel for the defendants in error, because a repeal would not affect their case; but on the same ground that a treaty can repeal a law of the state, it can nullify it. I have already proved, that a treaty can totally annihilate any part of the constitution of any of the individual states, that is contrary to a treaty. It is admitted that the treaty intended and did annul some laws of the States, to wit: any laws, past or future, that authorized a tender of paper money to extinguish, or discharge the debt, and any laws past or future, that authorized the discharge of executions by paper money, or delivery of property at appraisements; because if the words, sterling money, have not this effect, it cannot be shown that they have any other. If the treaty could nullify some laws, it will be difficult to maintain that it could not equally annul others." * * * * *

"Creditors are to meet with no lawful impediment, etc. As creditors can only sue for the recovery of their debts, in courts of justice; and it is only in courts of justice that a legal impediment can be set up by way of plea, in bar of their action; it appears to me that the courts are bound to overrule every such plea, if contrary to the treaty."

"In all these, and similar cases, it appears to me, that the courts of the United States are bound, by the treaty, to interfere. No one can doubt that a treaty may stipulate that certain acts shall be done by the Legislature; that other acts shall be done by the executive; and others by the judiciary." * *

"If a law of the State to annul a former law was first necessary, it must be either on the ground that the treaty could not annul any law of a state; or that the words used in the treaty were not explicit or effectual for that purpose. Our Federal Constitution establishes the power of a treaty over the constitution, and laws of any of the States." * *

"That Congress had the power to sacrifice the rights and interests of private citizens to secure the safety and prosperity of the public, I have no doubt; but the immutable principles of justice, the public faith of the states, that confiscated and received British debts, pledged to the debtors; and the rights of the debtors violated by the treaty, all combine to prove that ample compensation ought to be made to all the debtors who have been injured by the treaty for the benefit of the public. This principle is recognized by the constitution which declares 'that private property shall not be taken for public use without just compensation.'"

Here you have a very forceful treatise on the effect of war and the obligation of treaties of peace, upon the Legislatures, executives and our judiciary.*

The history of the world war offers uncontrovertible proof that war terminates, and is destructive of the rights, interests and titles of resident alien subjects. During this period the American Government's Alien Property Custodian, seized and actually possessed, vast millions of property, owned by subjects of Germany. True it was held subject to post-war treaty arrangements. The act, nevertheless, took place, the owners were divested, their titles extinguished, and, in many cases, their properties liquidated.

It seems to me, in these circumstances, dealing with the history of this Bogardus Farm, it is necessary to ascertain who was the record title owner, and whether any cloud, under the British law, had matured into a vested right, at the time of the close of the British drama; at, and from which time, all rights were held in abeyance, subject to revival and recognition, in the treaties of peace, terminating the long conflict, which gave birth to the first Republican Government in the world.*

Upon the birth of the American Nation, we find the recognition of existing titles in the treaties which brought peace. The solemnity of these treaties has been ably dealt with by the Supreme Court of the United States in the opinion hereinbefore quoted, and it is by reason of the recognition given to existing titles at that time, in these treaties, that the question as to the actual record title ownership of this Bogardus Farm becomes the crux, and one of the important points for our consideration.*

It is likewise relevant to note with what promptness the several states, following the Declaration of Independence, and particularly the State of New York, in which this property is situate, proceeded to the establishment of the new form of government, and what provision, if any, was made for the recognition of landed titles under the previous government. As early as 1777 we find the State of New York giving recognition to and making provision for such titles, by the enactment of the following provision in its first constitution:

The Thirty-sixth Section of the Constitution of 1777, New York, declared that nothing therein contained shall be construed to effect any grants of land made by the authority of the King, prior to the 14th day of October 1775.

"People vs. Clark, 9 New York, page 349:

"The learned Justice of the Supreme Court, whose able opinion in this case we are reviewing, a most respectable authority upon questions of titles to lands depending upon ancient grants, has declared that this provision of the Constitution has always been regarded as confirming the Royal Patents granted before the Revolution. It was this constitution which, as respects this state, dissolved the former political institutions, by which the colony was governed, and organized the new sovereignty."

CHAPTER THREE

Bogardus versus Trinity[6]

With the Dutch period safely bridged, many good Dutchmen, upon the taking of the oath of allegiance, became, to all outward appearances at least, good English citizens.

For the purpose of discussing the chronological events having to do with the Bogardus Farm, during the English period, I shall refer to the above case, brought in 1830, decided in 1847, and reported in 4 Sandford, 633, for here you will find chronicled all events and matters of the legal history of this farm.

Following the Court's statements, page 636, with reference to the substance of the bill of complaint, we find, at the outset, mention of the crown grant by Governor Nicolls,[3] of March 27, 1667.

Lovelace Transcript

The next events chronicled, and to which our attention is directed by the Court, are the Will[2] of Anneke Jans Bogardus and the Lovelace Transcript.[5] Therefore, we collate the passages in the reported case, having to do with either the will or the transcript, in order that a true picture may be gathered of the Court's position:

[636] That Anneke Jans died in 1663, leaving seven children, and two grandchildren by a deceased child, all of whom were named in her will as follows: Sarah Roeloffe, wife of Hans Kiersted; Catharine Roeloffe, wife of Johannes Van Brugh; **Jannettee and Rachel Hartgers, children of Anneke's deceased daughter, Sytie Roeloffe, wife of Peter Hartgers;** Jans Roeloffe, and Wilhelmn, Cornelius, Jonas and Peter Bogardus. That Anneke Jans devised the real estate before mentioned to those persons as her heirs, she having survived her first husband, Roeloffe Jans, as well as her second husband, E. Bogardus. That such real estate is the same as that described in a transfer or conveyance to Francis Lovelace, dated March 9, 1670-71 and recorded in book No. A of transports, begun in 1665, at page 122, in the clerk's office of the city and county of New York, executed by certain of the heirs of Anneke therein named, under [637] which instrument Trinity Church has claimed to hold by certain mesne conveyances after stated, all the rights, shares, and titles to the lands by such instrument conveyed, intended or described.

That the church made such their claims in writing, in the words following, viz.:

"New York, 2nd December, 1785. Gentlemen, we take the earliest opportunity of communicating to you the enclosed copy of the record of a transfer to Governor Lovelace of Dominie's Hook, from the heirs of Annetje Bogardus, and to which, though afterwards granted by government to Trinity Church, you now claim to have inherited from them. Time and long uninterrupted possession had, it seems, worn away the memory of this transfer, and the evidence of it would probably still have remained dormant, if Mr. De Hart (who is deeply interested in your claims,) had not accidentally discovered this record, and from a regard to justice, which does him great honor, made it known." That the written claim was addressed to certain agents for the heirs of Anneke Bogardus, and was signed by "James Duane, John Jay, Wm. Duer, John Rutherford, James Farquehar," as "a committee of Trinity Church for managing their controversy with the heirs of Anneke Bogardus."

That the enclosed copy of the record of transfer to "Governor Lovelace," was in the words and figures following, viz.:

"Anno 1670-71, March the 9th, Hare Johannes Van Brugh, in right of Catrina Roeloss, his wife, and attorney of Pieter Hartgers, William Bogardus, for himself and his brothers Jan Roelossen and Jonas Bogardus and Cornelius Van Bursen, in right of Sarah Roeloss, his wife, and **by assignment of Peter Bogardus,** all children and lawful heirs of Annetie Roeloss, late widow of Dominie Bogardus, deceased, for a valuable consideration, transported and made over unto the right Honorable Colonel Francis Lovelace, his heirs and assigns, their farm or bouwery, commonly called or known by the name of Domenee's Bouwery, lying and being on Manhattan's Island, towards the North River, the quantity of ye land amounting to about sixty-two acres, as in the former ground brief from Governor Stuyvesant, bearing date of the 4th day of July, 1651, and the confirmation thereupon from Governor R. Nicolls, [638] bearing date ye 27th of March, 1667, is more particularly set forth; **which transport was signed by them and acknowledged before the alderman, Mr. Olof Stevenson, ——— Cortlandt and Mr. John Lawrence.**

"A true copy from lib. No. A, of transports, begun in 1665, page 122, in the clerk's office of the city and county of New York, executed by Rob't. Benson, clerk."

As to the communication from the committee, set forth in the bill, the answer stated, that [643] the persons named did make such a communication in the form of a letter addressed to two agents for the claimants of Dominie's Hook, under the heirs of Anneke Bogardus; and that there was inclosed in such letter a certified copy of the record of transport to Francis Lovelace set forth in the bill.

That those persons were a committee of the vestry of the corporation, to defend its rights to a part of the king's farm, against a claim then recently set up on behalf of such heirs. **That the committee had no authority from the corporation, except that resulting from such appointment as committee; and the defendants submit whether it authorized them to communicate the transport to such agents.**

That when speaking of **Dominie's Hook** as having been granted to Trinity Church by the government, the committee referred to the letters patent by Queen Anne for the king's farm.

The defendants denied that the committee were authorized by the corporation to claim or set up in any way that the corporation ever held, had or claimed at any time, any part of the Dominie's Bowery, or any share or interest therein, under the instrument of transport, or under any of the parties named as grantors therein; and the defendants denied that by the communication set forth or otherwise, the committee did so claim or intend to claim.

Thus, it is admitted that the "Dominie's [722] Bowery," constituting the part of the Church farm before described was, on the 27th of March, 1667, granted and confirmed in fee, by Governor Nicolls, to the children and heirs of Anneke Jans, the widow of Dominie Everardus Bogardus, which confirmation recited a grant of the same land by the Dutch Governor, Van Twiller, to Anneke Jans and her husband, Roeloefe Jansen, in 1636, and a patent or ground brief to Anneke Jans, from Governor Stuyvesant, in 1654. It is in like manner admitted, that Anna or Anneke Jans Bogardus had eight children, who were either living at her death or had died leaving issue; and that, by the subsequent deaths of two of her children without issue, Cornelius Bogardus, one of her sons, became seized of one-sixth of the Dominie's Bowery; that his right descended, on his death, in 1707, to his eldest son, Cornelius; from the latter to his eldest son, Cornelius, in 1759; and from the latter, on his death, in 1794, to his five children, of whom John Bogardus, the complainant's father, was one.

It is also admitted that on the 9th of March, 1670, 71, some of the heirs of Anneke Jans executed a conveyance in fee of the Dominie's Bowery, described as containing about sixty-two acres, to Colonel Francis Lovelace, who was then the governor of the province of New York. This transfer purports to have been made by William Bogardus, for himself and his brothers, Jans and Jonas, and by two of the sons-in-law of Anneke Jans, one in the right of his wife, and as attorney of another son-in-law, whose wife was deceased, and the other in the right of his wife and by assignment of one of the sons, Peter Bogardus. It does not appear to have been executed by or for Cornelius Bogardus, the son of Anneke Jans; but it describes the whole farm or bowery, and speaks of it as the farm or bowery of the grantors.

This deed or transport appears to have been recorded, but at what time is not shown, otherwise than that it is found in a Book of Transports begun in the year 1665.

The bill is silent as to the possession of the [725] Dominie's Bowery, as well as the whole Duke's Farm, prior to 1705. It contains no allegation that Governor Lovelace, the Duke of York as proprietor of the province, or any other person, ever entered under the deed of transport to Governor Lovelace, except its charge as to the entry of the corporation of Trinity Church, which will be noted in another place. If any legal presumption as to the possession is to be deduced from the title having once been in Anneke Jans, and from the cautious statement in the bill as to the execution and effect of the deed of transport executed by a portion of her children, it is simply this, that on her death her children succeeded to the possession in point of law, and, on the execution of the transport, Governor Lovelace succeeded to that possession, at least to the extent of the interests of those whose title it assumed to grant. And as it assumed to convey the whole farm the presumption would necessarily be that he took possession of the whole, claiming it under the deed, unless he knew (and of this there is neither proof nor probability,) that there was one heir of Anneke Jans who was not named in the instrument.

A resort to legal inferences upon the admit- [726] ted facts in the bill, therefore, places Governor Lovelace in possession of this property, claiming the whole title in fee under a deed, as early as 1671. The subsequent transmission of his right and possession to the Duke of York as proprietor was so perfectly natural and obvious that the counsel on both sides concurred in assuming it as unquestionable. Governor Lovelace's administration terminated on the surrender of New York to the Dutch, in August, 1673, and his name has never appeared in connection with the farm from that day to the present. His title and possession (if he acquired either,) were doubtless taken in his official capacity, and vested in the Duke of York. They continued in the latter as duke, and then as King James II, till the English revolution by which he was dethroned and exiled, and then, with other crown and proprietary lands, were transmitted to William and Mary, and, on the death of William III, to Queen Anne.

Thus, setting out with the title of Anneke Jans, and the transport to governor Lovelace, we have the legal presumption, that the Dominie's Bowery was possessed from 1671 to 1705 by the Duke of York, and the sovereigns of England continuously, under a claim of title to the whole of it by deed, exclusive of any other right; and that at the date of the letters patent, Queen Anne was in possession and occupation, and receiving the rents to her own sole use and benefit.

With the above, we have the entire judicial picture with respect to the Will[2] and the Lovelace transcript.[5] *

Compelled to look into this Bogardus matter, through my appointment to defend John H. Fonda as a poor person, who was indicted for the fraudulent use of the mails, in connection with his activities in the interest of some of the Bogardus descendants, and being absolutely unfamiliar with the subject matter of the Bogardus controversy, in my quest for information I made inquiries from Trinity Church attorneys, who answered by citing me to the adjudicated cases. Naturally upon reading these cases, one by one, my interest focused upon the one case in which a trial of the facts was had, the 4 Sandford case.[6]. This seemed to be the only case in which the famous Lovelace transcript was mentioned. Instantly I realized the position in which this record placed my client, John H. Fonda, for had the children and heirs of Anneke Jans Bogardus executed this Lovelace transcript, and thus divested themselves of their interest in this property, it was apparent future generations could have no interest, and the charges brought against Fonda would be established.

As previously stated, never having heard of the Bogardus matter, I was at a loss to understand how, after all these years, there could be any agitation over this property. Information gathered from Fonda only puzzled me the more, for he certainly did not consider himself guilty of any wrong, although he told me he had been working with this matter for some forty years, and he was then an old man of about eighty-three. Adverse possession seemed to me, as it must have to many others, to answer all the questions involved. Here was an old man, absolutely sure he was in the right. Others came around who were interested in the outcome of the trial, and expressed their opinion as to the character of the possession of this property by Trinity Church. Before I knew it I was delving into the distant past in an effort to find some link which might tell the true story. Here was the story told in this 4 Sandford case[6]. A long, detailed account, covering the centuries past. I went over the story, again and again, only to reach the end with a most dissatisfied feeling, and the question arose, are the facts there related by the Court true? There, at the very outset of the case, was related in detail this transcript, which purports to have divested the children and heirs of Anneke Jans Bogardus of their interest in this property, save Cornelius, who, concededly, had not signed the transcript.*

On the previous page appeared a statement as to the contents of the Will. Yes, there on page 636 I observed these words "Jannettee and Rachel Hartjers, children of Anneke's deceased daughter, Sytie Roeloff, wife of Peter Hartjers," and there, on page 637, was this: "Johannes VanBrugh in right of Catrina Roeloss, his wife, and attorney for Peter Hartjers." What interest did Peter Hartjers have in this property? Why was this transcript signed by VanBrugh as attorney for Peter Hartjers? Johannes VanBrugh married Catrina Roeloffse, daughter of Anneke Jans. Peter Hartjers was the husband of her deceased daughter. Something must be wrong! Could there be a mistake in the report or statement of facts in the printed case? Apparently Johannes VanBrugh was acting for a person who had no interest whatsoever in this property—Peter Hartjers. For the moment I could hardly believe my eyes.

It was then I decided to reassure myself by securing a certified copy of the Will, a certified copy of the transcript. I could not believe that the Court, reciting from the two documents before him, would not have observed this discrepancy, would not have rejected this transcript as evidence, in fact, would have refused to base his argument, to uphold the passing of this title from the children and heirs of Anneke Jans Bogardus to Lovelace on such a paper, without the most careful scrutiny as to the sufficiency of its execution.

When the certified copies reached me, they substantiated the record in the case, and I was bound to reach the final conclusion that something was decidedly wrong. It was then I determined to put the acid test to this transcript, to search out, and collect all the information obtainable in regard to every name and statement appearing in that paper. It seemed beyond belief that there were any of the children of Anneke Jans Bogardus, who did not know that their deceased sister's interest was willed direct to her children, and under these circumstances this paper would never have been signed without the proper correction, had they been parties to its execution.

The closing statement of the copy of the transport on page 638 recited "which transport was signed by them and acknowledged before the alderman Mr. Olof Stevenson, ——— Cortlandt, and Mr. John Lawrence," but no signatures were given. Upon receiving the certified copy of the Lovelace transcript, I was amazed to see that there were no signatures to the transcript, and that the court record, had recited the full instrument.

Further pursuing my quest, I discovered that Peter Hartjers had lived in Albany, and died in Holland in the year 1670.

I located the baptismal record of Peter Hartjer's eldest daughter, Jannetje, as September 5th, 1649, indicating that she had reached her majority in 1670, but was unable to find a record of the appointment of a guardian for either Jannetje or Rachel Hartjers, a very essential point for a valid transfer of their interest in any property.

Delving further, I took the date of the transport Anno 1670/71, March the 9th, and found that Olof Stevenson VanCortlandt, was not alderman March 9th, 1670, but that he was appointed again in 1671. (Appendix plates on pp. 10 and 12.)

Further, Olof Stevenson VanCortlandt married into the Bogardus family, and it seemed preposterous to claim that he did not know anything of his relatives; did not know Peter Hartjers could have no interest in this property, and that by Anneke's will she had left her deceased daughter's share to the two grandchildren.

Which then was the elected date of the transport. March the 9th, 1670? Olof Stevenson was not an alderman at the time,[9] March 9th, 1671? Peter Hartjers, if he ever had any interest, was dead and Jannetje was of age to sign legal instruments.

Would all these facts arouse your interest and spur you on? Remember this is the "Lost cause!" Well, I'm strictly human. It aroused my curiosity, and urged me to spend nights of labor in research.

Then having in mind this transcript was recorded, as the 4 Sandford case recited, in Liber No. A of Transports, page 122, begun in 1665, this was the problem: "Recorded in the book of Transports Liber No. A, begun in 1665;" how to reconcile that fact with the activities of the various members of the Bogardus family to retain this property, activities referred to by the Court in this very case, covering a period from 1749 down to the time of the commencement of this suit, suits in which the Bogardus were claiming under a grant, ante-dating the Queen Anne grant some thirty odd years, without an attempt on the part of the attorneys for Trinity Church to ascertain if there was any record in this public office establishing a transfer by the Bogardus of their interest in this property. There was the Cornelius Brower suit, recited in the Court's opinion at page 726 of the record, in which the Court states, "The minutes of the trial, show that the respective parties read in evidence on that occasion, very much the same documentary testimony as the parties in this suit, presented eighty-five years afterwards." Was this transcript on record at that time? I could not believe that the attorneys in that case failed to search the public records for this much needed proof that the Bogardus had transferred their interest in this property. It was the all-important question. Was there any publicity attending all these activities? Was there anyone, who knew of these claims being made by the Bogardus, familiar with the public record of this transfer? How could it be true? All this period of one hundred and fourteen years, and throughout these cases, no reference seems to have been made to this transport, the very existence of which, if bona fide, would have settled the entire question.

Then there was the further problem:

In November, 1784, a committee was appointed by the Legislature of the State of New York to investigate the title of Trinity Church to King's Farm and Garden. The state was the moving party. It was the state seeking information not the Bogardus descendants. Was not Trinity Church represented before this committee? Where would such committee naturally look for information when investigating this title? In the book of transports. It would be foolish to claim that a committee thus formed would not seek every scintilla of evidence having to do with the question. Remembering that this Lovelace transcript was a recorded document, can you understand why it was not discovered by this committee? A most important link in the chain of title, this transport, which it is now claimed passed the possession of this farm into the Crown of England, recorded in the book of conveyances started in the year 1665, was overlooked. Can you believe it? Again, given that the committee overlooked the record, why was it not informed by Trinity Church of this most important bridge which was to be used later via the legal presumption, legal inference route, to justify the claim that the Crown was in possession, and thus granted the land to Trinity Church, under the Queen Anne grant? Think of it! Repudiated by the church which resurrected it, in front of the very Judge who used it to bolster up the squatter's claim to this Bogardus Farm!

In the face of these conditions, I was unable to believe that any of the Bogardus had knowledge of the existence of this paper; for had any of the family participated in its execution, would it not have been a matter of family tradition, and these endless attempts to maintain possession have long since ceased?

Still withholding any opinion, suddenly the Court's recital, at page 722, of the record, engaged my attention:

"This transfer purports to have been made by William Bogardus, for himself and his brothers, Jans and Jonas, and by two of the sons-in-law of Anneke Jans, one in the right of his wife, and as attorney of another son-in-law, whose wife was deceased, and the other in the right of his wife and by assignment of one of the sons, Peter Bogardus. It does not appear to have been executed by or for Cornelius Bogardus, the son of Anneke Jans; but it describes the whole farm or bowery, and speaks of it as the farm or bowery of the grantors.

This deed or transport appears to have been recorded, but at what time is not shown, otherwise than that it is found in a Book of Transports begun in the year 1665."

Here was the Court's statement, that the transcript purports to have been made by William Bogardus for himself and his brothers, Jans and Jonas, and by two of the sons-in-law of Anneke Jans, one in right of his wife, and as attorney for another son-in-law, whose wife was de-

Plate Six

THE RECORDS OF NEW AMSTERDAM

FROM 1653 TO 1674 ANNO DOMINI

EDITED BY

BERTHOLD FERNOW

MEMBER AMERICAN HISTORICAL ASSOCIATION; HONORARY RESP. CORRESPONDING MEMBER NEW YORK GENEALOGICAL SOCIETY, HISTORICAL SOCIETIES OF NEW YORK, PENNSYLVANIA, NEW JERSEY, VIRGINIA; BUFFALO, N. Y.; WATERLOO, N. Y.; AND DALLAS, TEXAS.

VOLUME VI.

MINUTES OF THE COURT OF BURGOMASTERS AND SCHEPENS

MAY 8, 1666, TO SEPT. 5, 1673, INCLUSIVE

PUBLISHED UNDER THE AUTHORITY OF
THE CITY OF NEW YORK
BY
The Knickerbocker Press
MDCCCXCVII.

Plate Six A

Mr Thomas de Lauall
Mr Corns. Steenwyck
Mr Matthias Nicolls
Mr Isaacq Bedloo
Mr Joh: de Peister
Mr N. de Meyer
Mr Corn van Ruyven
Mr Tho: Louelace
Mr Joh: van Brugh
Mr Jno. Lawrence
Mr Jerom: Ebbingh
Mr Gerrit van Tright

And for Sheriff . . . .

Most humbly requesting that Yo^r honn^r will be Pleased to Elect out of the s^d Number, such Persons as Y^r honn^r in his Wisdome shall judge fitt & expedient for the best & Well governm^t of this Corporation, and we shall remaine Yo^r honn^rs humble Serv^ts

The May^r & Aldermen of the City New Yorke
By Ord^r of the s^d May^r & Ald^rs
(Signed) N. Bayard, Sec.

New Yorke Octob^r the 9th 1669.

Out of the abovesaid Nominated Persons hath his honn^r the Govern^r this day Elected by his Commission bearing date the 9th of 8 b^r 1669, Mr Cornelis Steenwyck to be Mayor, Mr Thomas de Lauall, Mr Matthias Nicolls, Mr Cornelis Van Ruyven, Mr John Laurence & Mr Nicolaes de Meyer, to be Aldermen; & Capt John Manning to be Sherif of this Corporation from the day of the date of the s^d Commission, until the 14th day of August Next Ensuing, wch shal be in the Yeare of O^r Lord 1670. (: that being the day of the Month whereon was the former Election:) W^ch said Commission this day being Published, the s^d Mayor & Ald^rmen have taken their Oaths according to order & Custome, before his honn^r the Govern^r.

Att a Mayors Court held at New Yorcke, by his Majest^s Authority, on the 16th day of November, in the 21st Yeare of the Raigne of Our Souveraigne Lord CHARLES the Second by the Grace of God, of Great

TRINITY
BREAK YE MY COMMANDMENTS?

ceased, ignoring the terms of that will. This seemed to be sufficient proof that the Court had actual knowledge that his recognition of any right in this son-in-law was wholly unwarranted, in view of the fact that such son-in-law was not mentioned in the Will of Anneke Jans, and could, therefore, take no part, or enter into a transfer of this property.

Quite a natural thing to accompany such an instrument would be powers of attorney, for VanBrugh, VanBorsum and William Bogardus to act, but no mention is made of such papers in this record, and a search of the typewritten Book A, of Transports disclosed no such records.

Knowing, of course, our laws required powers of attorney to be executed and recorded, I busied myself to discover whether there had been some rule or law in force in the province in 1670/71. I found that by authority of his Majesty's Letters Patent, laws had been digested into one volume, for the public use of his territories in America, and published March 1st, 1664, at a general meeting at Hempstead, Long Island, by virtue of the commission of his Royal Highness, James, Duke of York, and Albany, and given to Colonel Richard Nicholls, Deputy-Governor, bearing date the 2nd day of April, 1664. These were the general laws in force at that time throughout the English provinces, included New Jersey, Pennsylvania and New York. I found that by these laws, no conveyance of lands within the government has holden good, except done by deed, in writing, under hand and seal, and possession given by the seller, or his attorney, so authorized under hand and seal, and that all deeds of lands within the government wherein an estate of inheritance was to pass, shall be expressed in these words, or to like effect: "To have and to hold said houses and lands, respectively, to the party or grantee, his heirs and assigns, forever." That such deeds were required to be recorded within one month.

I became convinced that the willingness of the Court to recognize this transcript as a legal document, was unjustifiable, and it was then I became curious to ascertain whether the court had any connection with the church itself.

My investigation narrowed down to these questions: Was the statement in this transcript "signed by them and acknowledged before the alderman Olof Stevenson..... Courtlandt and John Lawrence" true or false? If true, where were the signatures? Without those signatures the declaration was false. If false in one particular, was it false in all?

Did Olof Stevenson VanCortlandt take this acknowledgment on March 9th, 1670, and sign this paper as alderman? If he did then it was a false certification, for he was not alderman at the time.

If March 9th, 1671 was the elected date of this transport, all except John Lawrence, the alderman, being members of the family, knew that the son-in-law Peter Hartjers was dead.

If March 9th, 1671 was the elected date of this transport, Jannette Hartjers, the granddaughter, mentioned in Anneke Jans' Will, had reached her majority, and should have participated in the transfer.

All parties mentioned in the transcript being members of the family, knew the contents of Anneke Jans Will, and knew that Peter Hartjers had no interest in the property.

Was the statement in the transport "All children and lawful heirs" true or false? Anneke Jans had only been dead seven or eight years. Will you believe these children did not know who were the lawful heirs under their mother's will; did not know that Peter Hartjers had no interest under their mother's will, and, therefore, could not be "A lawful heir?"

Just what were the peculiar circumstances, if this was a legal document, which kept Cornelius Bogardus from participating in this transfer?

In the face of all these facts, will you believe that any one of the true and lawful heirs of Anneke Jans Bogardus ever signed this paper, or that it was prepared by anyone connected with the Bogardus family at its purported date, March 9th, 1670/71, or by anyone who even knew the Bogardus family history?

Do you believe that Alderman Olof Stevenson VanCortlandt or John Lawrence ever signed this paper?

Do you believe this instrument ever had any legal existence, or was it a spurious, manufactured record?

Do you believe Lovelace could acquire any title to the Bogardus tract under this supposed transport?

In view of these facts, did this Lovelace transcript have any place in this case? Was it entitled to any respectable consideration by the Court, and were the Court's "presumptions" and "legal inferences" wholly unwarranted in giving recognition to this void and illegal document, which was apparent from the instruments under the Court's consideration at the time.

With these facts and others, which must await presentation, I reached the opinion that this Lovelace transcript was a manufactured spurious record, a record manufactured by one wholly unacquainted with the history of the Bogardus family, to which the names of the long departed were attached. Aye, manufactured! And through influence, recorded, to avoid proving signatures, and all preliminary to this suit, which gave it birth, to lay a foundation for proof of constructive possession, when active possession was impossible of proof, to which was to be grafted, as it was, judicial "presumption" and "legal inferences" as a substitute for a written conveyance, to make a showing that this title had been transmitted to the crown, and later conveyed by Queen Anne to Trinity, all following the revolution when the hold upon public officials had lessened, and much agitation on the part of the heirs of the original owner became active.*

In reaching this conclusion, not the least convincing to me was the fact that in 1670/71 history does not record that the province was in such dire need of lands as to be in the market to secure, through purchase, real property of any description, rather were they granting lands upon petitions, to entice foreign settlers.

After a consideration of the facts, is it not true, have you not yourself reached the conclusion, that whatever title or rights Trinity Church has ever had, insures to it by reason of squatting upon this property, and asserting the claim of adverse possession? * With the evidence of the persecution of that part of the family which sought to hold possession of their lands, have we not this supposed religious institution, the fundamental law of which should be God's Holy Book, an edifice whose mission it is to point the way to God, acknowledging its unmoral conduct in taking this property which belonged to the children of its neighbor? This act alone, if none followed should have destroyed the usefulness of this edifice as a teacher of God's laws to the Christian world, and should compel a denial of its right to recognition as a temple of the Almighty."

For May^r^
Captn Thomas de Laval,
Captn Matthias Nicolls.
For Alderm^n^
Johannes van Brugh,
Johannes de Peister,
Olof Stevensen Cortlant,
Isaacq Bedloo,
Poulus Leendersen,
Govert Loocquermans.
For Sheriff.
Captn John Manning,
Allard Anthony.

Most humbly requesting that Yo^r^ honn^r^ wil be pleased to Elect out of the s^d^ Number such persons, as Y^r^ honn^r^ in his Wisdome shal Judge fitt for the best and well government of this Corporat^n^ and We shall Remaine

Yo^r^ honn^r^ humble Servants,
The May^r^ and Aldermen of the Citty New Yorck
to witt Cornelis Steenwyck, Mayo^r^;
Tho: de Laval,
Matth Nicolls,
Jno. Laurence,
Corn. van Ruyven,
Nicolaes de Meyer, Aldermen.
By Ord^r^ of the s^d^ Mayor & Alderm^n^
(Signed) N: Bayard, Sec.

New Yorke, Octob^r^ the 10th 1670.

New Yorke, Octob^r^ the 13th A^o^ 1670.

Out of the Within Written Nominated Persons did his honn^r^ this day by his Commission Elect

Captn Thomas de Lavall to be Mayor.

Capt. Matthias Nicolls,
Mr John Laurence,
Mr Olof Stevensen,
Mr Johannes van Brugh,
Mr Isaacq Bedloo.
} to be Alderm^n^

And Mr Allard Anthony to be Sherif of this Citty from the day of the date hereof untill the 13th day of Octob^r^ in the Yeare of O^r^ Lord A^o^ 1671: And have alsoo made Oath Accordingly, Whereuppon the s^d^ Commission was this day Publisht by the Governrs Order.

N: Bayard, Sec.

New Yorke A^o^ 1670.

The following Named Persons have entered their Banns of Matrimony before the H^r^ May^r^ of this City, to be proclaimed at the usual time & place.

1670

3 June. Enogh Michielsen, Bachelor, born at N. York, with Dirckie Meyers, Spinster, born at Amsterdam.

11 ditto. Benjamin Provoost, born at Harfort in N. England, with Sara Barents, born at New Haerlem.

23^d^ July. Nicholas Jans Baker, Widower of Annatie Harmans, with Maretie Gerrits, widow of Frans Jansen of Hogten.

28th ditto Claes Cornelissen, born at Schoonhoven, with Cattelyn Jansen, born at Amsterdam.

13 Aug. Evert Evertsen Pels, born at New Albany, with Breghjen Elswaert, born at Amsterdam.

27 ditto. Johannes Vernelje with Aeltie Waldron.
Jan Nagel with Rebecca Waldron.

3 Septr Marius de Vos, Widow^r^ of dec^d^ Magdaleentie Teunis; with Elsie Barents, Widow of Adam Bremer.

1st Oct. Matthyas de Haert, Widow^r^ of Annetie Jacobs Sprongh, with
Johanna de Witt, widow of Johannes de Witt.

8 ditto Gerret Huygen de Kleyn with Geertie Rutgers, Widow of dec^d^ Harmen Wessels.

New Yorke, Octob^r^ the 15th 1670.

By Order of the Worshipp^ll^ Mayor Thomas de Lavall was this day the following order made & Issued out:

Whereas this Citty New Yorke hath bene at excessive Charges towards the renewing & repairing of the Great Bridge of this Citty, and therefore requisit that all those that make use thereof should Contribute somthing towards the same; Wee have therefoer thought fit to Impose

TRINITY BREAK YE MY COMMANDMENTS?

The Letter and Certification

The letter, which accompanied the transport, to the agents for the heirs of Anneke Jans Bogardus, was dated December 2nd, 1785. The transcript is supposedly dated March 9th, 1670/71 — lapse of time one hundred and fourteen years. All parties named in the instrument dead. The absence of any signatures establishing beyond question that this instrument was not executed, and thus refuting the statement by the alderman that it was so signed and acknowledged, and the aldermen, like all the other parties named in the instrument, long since gathered to their fathers.

Now read the amazing statement in the letter: "Gentlemen, we take the earliest opportunity of communicating to you the enclosed copy of the record of transfer to Governor Lovelace of Dominie's Hook." If the statements in this case are true, if the transcript was recorded at the time stated, would it ever have been necessary to send this letter to the agents for the heirs of Anneke Jans Bogardus?

Time and uninterrupted possession, had, it seems, worn away the memory of this transfer, according to the letter, but had it worn away the record? "The evidence of it would have remained dormant, if Mr. DeHart had not accidently discovered it, and from a regard for justice, which does him great honor, made it known." Bear in mind just what this means, that time and uninterrupted possession had worn away the memory of a recorded document, which was "accidentally" discovered.

In the testimony given in the 4 Sandford case[6], a witness for the defendant, Lewis Hammersley, stated that he was a member of Trinity Church; that his father had been a vestryman of the church when living, and that his father had told him a gentleman by the name of DeHart in General Hamilton's office had found the paper, and the vestry had given him a piece of plate for finding it." The vestry gave this man a piece of plate for finding a copy of a record that was on file in Liber No. A of Transports at page 122. If the reader can find anything more incongruous than this episode, in regard to the accidental finding of a recorded paper, I would like to hear it. It is a good thing for the City of New York, or Manhattan Island, that there was not more time, and more uninterruption, for verily with an island as small as Manhattan the whole of it would have been lost in this shuffle.

Another report of this valuable discovery by the accommodating and reliable DeHart, was found in another volume, which recited that he had accidentally discovered the record in the course of some antiquarian research, in Hamilton's office. Under the Dutch, all conveyances were required to be recorded within a limited time, and like provision was made under the Duke's Laws,* published by Governor Nicolls, the first English Governor, immediately upon taking office. Strange indeed, if the instrument was recorded, so much accidental antiquarian research was necessary to discover it!

The Legislature of the State of New York had been investigating the subject of the ownership of the King's Farm. In view of the general public activities in this direction, would it not have been more appropriate for the committee to have addressed this valuable information to the scrutiny of the lawmakers of the State, particularly if Trinity was then claiming the Bogardus farm as part of the King's Farm?*

At this time Trinity had been, for some period at least, out of the management of the church farm, according to the testimony of one of its witnesses, see page 668 of the 4 Sandford case.[6] James Bleecker, a vestryman of Trinity Church, from 1814 to 1842, testified: "Soon after the peace, and as early as 1784, the vestry of Trinity Church resumed the management of the church estate, and made sales and leases thereon in lots and parcels." This witness did not state how long the management was suspended, or in whose charge the property had been during the interim.*

At any rate, history does record the finding of the Lovelace transcript in Hamilton's office, and that the man who found it received a reward of plate from Trinity Church. Makes one wonder just what, when, and how the paper got in that particular place, at that particular time.

Alexander Hamilton, who as everyone knows, came to a tragic end at the hands of Aaron Burr, is buried in Trinity Churchyard, and 'tis seldom anyone visits the churchyard without inquiring where the grave of Hamilton lies.

Alexander Hamilton's son Philip, met the same tragic end as his famous father. One George L. Eacker, a member of the New York bar, a friend of Aaron Burr, fell into an altercation with young Philip, the eldest son of Alexander Hamilton, who was at that time nineteen or twenty years old. This resulted in a duel. Thomas Cooper was second to George L. Eacker, and David S. Jones, who was then private secretary to Governor Jay, was second for young Hamilton. Philip was mortally wounded. He died the next day, and was buried in Trinity Churchyard.

When you have digested the transcript, and the letter accompanying the same, read the illustrious names appended to that letter. This is the committee appointed by Trinity Church for managing their controversy with the heirs of Anneke Jans Bogardus:

JAMES DUANE:
Vestryman from 1772 to 1777. Warden from 1784 to 1794. Member of the old Congress; first Mayor of the City under the government of the State of New York; first Judge of the United States District Court upon the organization of the judiciary under the present Constitution of the United States; receiving the appointment from Washington.

JOHN JAY: Warden in 1785 and again from 1788 to 1791. Signer of the Declaration of Independence. Delegate to the old Congress and President of the same. Secretary for foreign affairs under the old Confederation. Minister Plenipotentiary to Spain during the Revolution — first chief justice of the State — Commissioner with Adams and Franklin to negotiate a peace with England — Special Envoy to Great Britain for establishing a Commercial treaty in 1793 — Chief Justice of the United States from 1789 to 1794, and Governor of the State of New York from 1795 to 1801.

WM. DUER:
Vestryman from 1784 to 1787. Member of the Continental Congress from 1777 to 1778.

JOHN RUTHERFORD:
Vestryman from 1784 to 1787. Colonel in the Revolutionary Army and Senator of the United States from New Jersey.

JAMES FARQUHAR:
Vestryman from 1784 to 1801.

Time honored names, which have passed down through the ages glorified as representative of colonial days. Do you believe these men ever signed that letter in truth and in fact? I cannot bring myself to so believe.

Somehow or other my mind will run to a little story printed years ago in a magazine called "The Idler" published in England, by Jerome K. Jerome. It seems a dear old

April 24, 1743; Debora, bp. Jan. 6, 1745; Jeremie, bp. Aug. 17, 1746; Debora, bp. July 17, 1748; Hendrick, bp. May 20, 1750; Catarina, bp. Sept. 29, 1751; Maria, bp. March 3, 1754.

HANSEN, Philip, m. Geertruy Van Nes, Feb. 16, 1740. Ch: Sara, bp. Sept. 7, 1740; Jan, bp. March 28, 1742; Cathalyntje, bp. March 11, 1744; Margarietje, bp. Feb. 16, 1746; Annatie, bp. Feb. 18, 1750; Henderick, bp. Nov. 24, 1751; Catarina, bp. Oct. 28, 1753; Hendrick, bp. July 16, 1758.

HANSEN, Hans, Junr., m. Margarita Kip in New York, July 20, 1740. Ch: Johannes, bp. Apr. 24, 1741.

HANSEN, Isaac, m. Maria Bratt, Dec. 11, 1742. Ch: Johannes, bp. Oct. 16, 1743; Magdalena, bp. Jan. 4, 1745; Magdalena, bp. Feb. 16, 1746; Benjamin, bp. Oct. 25, 1747; Sara, bp. Aug. 20, 1749; Albert, bp. July 14, 1751; Magdalena, bp. July 8, 1753; Willempje, bp. Sept. 8, 1754; Margarita, bp. April 10, 1757.

HANSEN, Johannes, m. Geertruy Slingerland, Oct. 14, 1764. Cornelia, b. Sept. 19, 1765; Magdalena, b. Dec. 10, 1767; Isaac, b. Jan. 20, 1771; Isaac, bp. Dec. 7, 1776; Tennis, b. Aug. 17, 1781; Benjamin, b. June 26, 1784, d. in Albany, April 28, 1863, a. 79 y.

HANSEN, Jan, m. Elizabeth Vander Heyden, Dec. 13, 1771. Ch: Elizabeth, b. April 30, 1774.

HANSEN, Albert, m. Engeltie Hansen, Dec. 7, 1778. Ch: Margarita, b. Nov. 29, 1778; Maria, b. Aug. 14, 1783.

HANSEN, Dirk, m. Lena Low, July 1, 1781. Ch: Catharine, b. May 25, 1782; Debora, b. June 7, 1787; Richard, b. Nov. 6, 1790.

HANSEN, Pieter, and Rachel Fonda. Ch: Hendrick, b. July 6, 1782.

Hanslkker, Jurriaan, m. Anna Smith, Sept. 27, 1777. Ch: Adam, b. Jan. 22, 1778.

Hanway, John, and Hester Ham. Ch: John, b. Dec. 27, 1777.

Hardenbergh (Herttenberch), Gerrit Janse, was in Albany as early as 1667; in 1690, owned the sloop, Royal Albany; he and wife Jacpie Schepmoes, made a joint will in 1678, their children are mentioned but not by name; one named Barendine, was bp. Oct. 28, 1683.

Harding, Frank, of Claverac, and Catrine Janse Van Hoesen. He made will Dec. 19, 1737, . . . proved Nov. 3, 1742, and mentioned the following children: but not his wife: Jan, eldest son; Willem; Sara, wife of Jonathan Reese; Gerritje, bp. Jan. 17, 1692, m. Justus Valkenaer, both deceased at date of will; Volkie, m. Leendert Rees.

HARDING (Hardick, Hardinks), Jan, of Clavarac, m. Maria Beekker, Dec. 22, 1706. Ch: Franciscus, bp. Sept. 28, 1707; Anna, bp. Jan. 22, 1710; Catharina, b. Dec. 12, 1711, "op Klaverack" and bp. at Loonenburgh, Jan. 13, 1712; Hillietje, b. Feb. 18, 1715; Elsia or Elizabeth, b. July 29, 1720.

Harenstrong, Jan, and Catharyn.... Ch: Jan, bp. April 22, 1736.

Hark, Jurriaen, and Jannetie Van Buren. Ch: Daniel, b. Aug. 12, 1778.

Harrick (Harwich ?), Andries, and Elizabeth Warner. Ch: Johannes Jurriaan, b. Oct. 4, 1784.

Harrington (Harring), James, m. Christina Coens, Feb. 9, 1773. Ch: Maria, b. Nov. 6, 1774.

Harris, Jan (John), "geboren in Oude Engeland," m. first, Lysbet Chase; and secondly, Moeset Tassama "geboeren in Nieuw Engeland" May 3, 1701. Ch: Maria, bp. Nov. 22, 1685; Willem, bp. April 7, 1689; Willem, bp. Sept. 6, 1691; Lysbeth, bp. June 22, 1701; Tannes, bp. Jan. 27, 1703; Jacob, bp. June 2, 1707; Francyntje, bp. July 4, 1708.

HARRIS, Willem, and Elizabeth .... Ch: James, bp. Oct. 24, 1756.

Harssen, or Harzen.

Harzen, Barnardus, m. Catharyna Pruyn, Feb. 12, 1735. [Bernardus H. m. Sara Myer, in New York, April 5, 1725.] Ch: Jacob, bp. Feb. 22, 1738; Anna, bp. March 15, 1741; Frans, bp. Jan. 19, 1752; Frans, bp. Feb. 24, 1754.

HARZEN, Jacobus (Jacob, Junr.), m. Maria Pruyn Bruin), May 8, 1740. Ch: Cornelia, bp. March 1, 1741; Margarita, bp. June 5, 1743; Margarita, bp. April 27, 1746; Margarita, bp. Jan. 10, 1748; Aaltie, bp. Aug. 12, 1750; Maria, bp. April 15, 1753.

HARSSEN, Jacob, m. Alida Groesbeck, June 4, 1764. Ch: Sara, b. May 13, 1765.

HARSSEN, Mattheus, and Bregje Van Hoesen. Ch: Volkert, b. June 19, 1773: Robert, b. April 19, 1776; Alida, b. Sept. 3, 1784.

HARSSEN, Arent, m. Aaltie Quackenbush in New York, May 1, 1768. Ch: Jannetie, b. Oct. 21, 1775; Arent Leendert, bp. Nov. 29, 1778.

HARSSEN (Harsingh), Frans, m. Rebecca Spoor, July 10, 1779. Ch: Bernardus, b. Sept. 19, 1780; Catharina, b. Oct. 14, 1783; Catharina, b. Feb. 24, 1785; Gerrit, b. May 16, 1787; Bernardus, b. Feb. 1, 1790; Magdalene, b. July 8, 1795.

HARSSEN, Isaac, and Maria Roller. Ch: Geertruy, b. Jan. 5, 1787.

Harstor, Zacharias, and Rebecca Spoor (See Frans Harssen above). Ch: Johannes, b. Dec. 1, 1792.

Hart, Nicholaas, and Margarita .... Ch: Phebe, bp. Dec. 26, 1768.

HART, Henry, m. Elizabeth Visscher, Oct. 25, 1782. Ch: Ezekiel, b. March 22, 1783; Harmen Visscher, bp. Sept. 21, 1784.

Hartgers, Pieter (Van Vee), came over in 1643, and settled at Manhattans, removed in 1654 to Beverwyck and became one of the magistrates; m. Sytje Roeloffse, daughter of Anneke Janse, and had two daughters: Jannetie, bp. in Manhattans, Sept. 5, 1649; and Rachel. He returned to Holland and d. in 1670.

Harten, William, and Any Dody (Doty ?). Ch: Elizabeth, b. Jan. 1, 1781.

Hartley, William, and Frances .... Ch: Thomas, bp. Feb. 20, 1757.

Hartwell, John, and Mary Holiday Ch: Hannah, b. Oct. 28, 1778.

Hartwich, John, and Rachel Archer. Ch: Catharine, b. July 12, 1784.

Harwich, Joost, m. Christina Philips, Aug. 24, 1766. Ch: Jacob, b. April 11, 1768; Christina, b. July 8, 1777.

HARWICH, Philip, and Susanna Walton. Ch: Elizabeth, b. July 18, 1777.

Harwiz, Coenraad, m. Magdalena Meyer, Nov. 23, 1770. Ch: Catharina, b. March 23, 1778; Magdalena, b. Aug. 6, 1780.

Hash, Hannes, and Catharina Possing (Bussing ?). Ch: Johann Pieter, b. June 27, 1764.

Haslet, Thomas, and Margaret Gibson. Ch: Thomas, b. April 21, 1781; Mary, bp. March 30, 1783.

Haswell, John, and Mary Halliday. Ch: John, b. Jan. 1, 1780.

HASWELL, Robert, m. Sarah Mark, Nov. 24, 1780. Ch: Mary, b. March 1, 1781.

HASWELL, Joseph, m. Mary Mark, Oct. 14, 1779. Ch: John, b. Sept. 27, 1781.

HASWELL, Arthur, m. Mary Coughtry (Coutree), Aug. 19, 1781. Ch: Elizabeth, b. May 12, 1782; Mary, b. Oct. 24, 1784.

Hatfield, Edmund, and Jane Ranken. Ch: John, b. Nov. 20, 1797; Mary Anna, b. Oct. 16, 1798.

Haver, Christiaan, and Engeltie Vander Werken. Ch: Geertruy, bp. June 2, 1751; Christiaan, bp. June 3, 1753.

Hawks (Hawx), Christophel, and Mary Passinger. Ch: Andrew, b. Oct. 5, 1796; Anna Maria, b. Dec. 24, 1800.

Hay, Udny, and Margaret Smith. Ch: Jane-Ann, b. Jan. 2, 1778.

Haylingh, William, and Jenny .... Ch: William, bp. June 9, 1723.

Hayner, see Heiner.

Heaton, John, and M. .... Ch: Rebecca, bp. May 16, 1790.

Heener, see Heiner.

Heemstraat (Van Heemstraaten), Takel Dirks and Maritie .... Ch: Dirk; Jannetie, bp. Dec. 7, 1784.

priest was over fond of his ale, and was in the habit of leaving the monastery when all were asleep, and wending his way over the garden wall to the "White Horse Inn." The Abbe walking in the garden noticed a wellworn path to the wall, and then again from the wall on the other side on down to the Tavern. He wondered who could have worn the path, and set himself to watch. That night down the path came the good priest Father Lawrence, wending his way to the wall, climbed over it and down the further path to the inn, where he was waited on by the buxom barmaid. After much social chat, a goodnight nip, and farewells to the company, he repaired, though shakily and unsteadily, up the path to the garden wall, over the wall, and so on up to his room, where he was confronted by the Abbe. "Where hast thou been?" asked the Abbe. Father Lawrence could only stammer and stumble some excuse, the while he hiccoughed. The Abbe told him that he knew all, and for his sins Father Lawrence should be walled up alive. Poor Father Lawrence! How he pleaded. How he promised. The Abbe was adamant, and then suddenly bethinking said "Well, I'll forgive you if you write the lives of the saints by daybreak tomorrow morning." A large contract for a few hours. Father Lawrence set to work, only to find the task too great for his befuddled brain. He called on the saints to help him, but no answer came to comfort him in his dire distress. At last in his despair he called on the devil, and amid much sulphur and brimstone appeared the gentleman himself. "What will you?" asked the devil, whereupon Father Lawrence poured out his troubles thick and fast, relating that his punishment was to write the lives of the saints before daybreak. Could the devil help? Could he! Aye, he would pen the lives of the saints for Father Lawrence, but in return he had to pawn his soul. Father Lawrence agreed. The devil sat him down and with pen and ink started writing in the big book provided for the lives of the saints. As he wrote he chuckled with glee at what he was writing, and mentioning the names would speak of different acts which he thought did not entitle one to sainthood. He completed his task with the statement that he had finished, but he thought that many of those he had written about belonged with him, but he guessed he'd let them remain where they were.

Focus your attention to the statements made by the Court at page 726: "Governor Lovelace's administration terminated on the surrender of New York to the Dutch, in August, 1673, and his name has never appeared in connection with the farm from that day to the present. His title and possession (if he acquired either) were doubtless taken in his official capacity and vested in the Duke of York." Note the statement that because Lovelace was the Governor of New York, he naturally took the property in the name of the crown. Legal inference! Legal presumption! It is almost unbelievable that a Court would dare to substitute judicial presumption, where a deed or written instrument was required; but so much has been accomplished in this matter through the tremendous power and influence of Trinity Church, this seems to be just another link in the possession chain which Trinity Church forged, with the able assistance of the colonial honor roll, and of the legal fraternity, to hold the taking of this property lawful.

We will now dissect the repudiation in the plea and answer of the defendants in the 4 Sandford case, at page 642. The defendants interposed a plea to all the relief prayed for in the bill, except.

1. The supposed entry of the corporation into the lands formerly called Dominie's Bowery under the instrument of transport mentioned in the bill.
8. As to the alleged authority of Messrs. Duane and others, and the intent of the communication.

As to the eight subjects, the answer accompanying and supporting the plea, contained a general and particular traverse of the five first, and denied that the Church ever entered or claimed under the deed of transport supposedly given to Lovelace; and, as to the communication from the Committee, appointed by Trinity Church for managing their controversy with the heirs of Anneke Jans Bogardus, they had no authority from the church to do any such thing as transmit this information and accompanying paper to the agents for the heirs of Anneke Jans Bogardus. Hence you have but the one conclusion to reach, this committee was non est so far as the church was concerned. They were authorized to do nothing. Think of the consummate nerve of these defendants! They form a committee for a specific purpose, and repudiate the action of the committee done in performance of the duties for which they were formed.

Thus are scriptures fulfilled. "The stone which the builders rejected, has become the head of the corner." This transport, which supposedly was recorded in the book of transports begun in 1665, and brought to the light of day in 1785 by an act worthy of a gift from Trinity Church, this paper sent under such auspicious circumstances to the agents of the heirs, is rejected. History shall record this spurious record, and carry it down through the ages to confront this church in its future persecutions of those who may, like the writer, feel that this family of Bogardus was entitled to something more than the derision, ignomy and scorn with which they have been deluged.

Someone was guilty of preparing this spurious paper. Someone was guilty of having it recorded. It certainly did not come from the archives of the Bogardus descendants. Gloss it over as you will, the fact remains that there is not a scintilla of paper chain of title passing this Bogardus Farm or the Old Jans Land into the hands of the English Crown. Nay, might it not be well to look into the pressure which was palpably used to make the State of New York drop further action as to the King's Farm, after passing a resolution that such property did not belong to Trinity Church, thus opening the door for the rewarding of this tory element, and robbing those who helped to make our free America, allowing the gobbling up of the Bogardus Farm, and old Jans Land, to none of which, in my opinion, a paper chain of title exists.*

A true copy! Transport recorded! "Executed by Rob't Benson, clerk!" "Executed by Rob't Benson, Clerk!"

Dr. Johnson said "We are easily shocked by crimes which appear at once in their full magnitude; but the gradual growth of our wickedness, endeared by interest and palliated by all the artifices of self-deceit, gives us time to form distinctions in our favor."

Emerson said "Commit a crime and the earth is made of glass. Commit a crime and it seems as if a coat of snow fell on the ground, such as reveals in the woods the track of every partridge and fox, and squirrel and mole."

Conan Doyle said "Every criminal leaves some footprints." I add, on the sands of time, for it has taken a long time to uncover this page in history.

No one will claim that it was difficult to find the name of the County Clerk of New York County, at the time this famous letter was purported to have been penned to the

agents of the Bogardus, December 2nd, 1785 — after the Revolution. Why did not Mr. Benson attach the date and seal to his certification? At that time, if we can take histories for our guide, matters in the County recording offices had come to a fixed system,* which proves conclusively, to my mind, that Rob't Benson never saw that paper; never was officially a party to that paper.

Rob't Benson was the first county clerk after the Revolution. On February 9th, 1784, he became county clerk, of the county of New York. His successor was Tunis Wortman, who took office August 25, 1801. The lapse of time between the date Benson took office and December 2nd, 1785, the date of the letter, was one year and ten months. Certainly no one can say Mr. Benson signed it before he became county clerk, and surely it will not be claimed that it was signed after the date of the letter, for it accompanied the letter.

This letter by these honorable gentlemen makes necessary the happening of four events: 1—A certification. 2—The securing by someone of this certification, without any apparent reason, other than to make ready for its accidental discovery. 3—The planting of the document in Hamilton's office, unbeknown to DeHart. 4—The accidental discovery of the paper by DeHart in Hamilton's office. All within a period of a year and ten months.

But why was this paper planted in Hamilton's office?

Hamilton was born January 11th, 1757, so that he could not have acted as attorney for any of the parties named in this alleged instrument of transfer, which might be the cause of a copy of such paper being found in his office. But the paper when found had the undated, unsealed certification attached to it, according to the letter. If Hamilton was engaged as attorney for Trinity Church to procure this certified document, why did he not see to it that the certification was sealed and dated, a most important matter, and what was his reason for burying it after he received it?

"Time and long-uninterrupted possession, had, it seems worn away the memory of this transfer, and the evidence of it would probably have remained dormant, if Mr. DeHart (who is deeply interested in your claims) had not accidently discovered this record, and from a regard to justice, which does him great honor, made it known."

Just study the Benson certification, no day, no month, no year, no seal, and this ten years after the Declaration of Independence. Will you believe this certification ever issued from any public office? This form of certification, without date, or seal, challenges the veracity of the statement contained in this letter by the committee. Will you believe that John Jay, who ten years prior to the date of this letter was one of the signers of no less a memorable document than the Declaration of Independence, first Chief Justice of the State of New York, and later Chief Justice of the United States, signed this letter, and accepted this certification, without date or seal, as a legal certification?

Aye, some antiquary, antiquated this antiquity, and discovered it in an antiquarian research! But here is the crucial point, this illustrious and honorable committee of vestryman and wardens of Trinity, stated that this "evidence" of this transfer would have remained dormant, except for its accidental discovery by DeHart. Evidence! Evidence! A recorded paper? Prepared, certified, planted, antiquated and resurrected all in the space of one year and ten months. Were the statements made by this honorable committee, in this letter, true or false? How could this "evidence" have remained dormant if it was then a recorded document? Will you believe that Trinity Church, from the time the litigation started over this property, in 1749, to this very hour, has failed to secure a copy of every record in any public office, in fact every scrap of evidence extant that has to do with this property?

Was this to be a supreme effort to build around this taking, a judicial fort, with the aid of complainant, for pay or not, as the case may be, realizing fence burning, and force, had been ineffectual, and the control of matters was becoming precarious, on account of the knowledge of activities in the face of an increasing population?

Will you believe all this lost, found, research, and fine phrases of this letter, were anything but an effort to explain and excuse, after all this long time, this sudden appearance of a newly made link to establish, with the aid of judicial "hi-umption" and legal presumption, and what not inferences, the crown acquisition of this property, in order that it might be claimed all vacant lands between here and there, then and where, everything below Albany, was included in the King's Farm?

Those footprints on the sands of time, the tracks in the snow revealed, are these words "Time and long uninterrupted possession." "The evidence would have remained dormant" and "A true copy from Lib. No. A of transports, begun in 1665, in the clerk's office of the city and county of New York, executed by Rob't Benson, clerk." Will this convince you that I am right in my opinion, that this paper was never in existence, until, preliminary to the bringing of this very case in 1830, when strange as it may seem, you find the plaintiff in the suit, setting it out in full in his complaint, apparently as accommodating as the antiquarian DeHart, though history does not record any reward given for the friendly act.*

Whatever Benson, DeHart and Hamilton had to do with the production of this paper, was accomplished within that stated period of time, one year and ten months, when the committee which signed that letter, if it ever did sign it, turned it over to the agents for the Bogardus, complimenting DeHart on his regard to justice in making known the accidental discovery. A wonderful instance of the regard for justice! Something, my friend, no Bogardus has enjoyed since the passing of Anneke Jans; something no one who has espoused the cause of the Bogardus has enjoyed; something which has been beyond possibility for a Bogardus, or an exponent of the Bogardus cause, and no one knows that better than do I. That is the reason for the publishing of this story. Would you like to have all, your life, your liberty, your fortune, depend upon this brand of "Regard to justice?"

We have thus far traversed just four pages of the 4 Sandford case. What do you think of this brand of justice? Does it read to you like a piece of manufactured judicial favor — a gigantic conspiracy? Wait, this has only just started, for I have yet remaining some one hundred and thirty-four pages to analyze. One hundred and thirty-eight pages were contained in this published record of the 4 Sandford case. The most celebrated and best-beloved of the Trinity cases. The case, which is always exploited to prove to the world that Trinity has suffered long, and is kind, doth not behave itself unseemly, seeketh not that which belong to another, thinketh no evil, and has the keenest sense of honor, the deepest regard for justice.

Ye gods, justice, what crimes are committed in thy name!

We have yet to traverse the pages in this record having to do with the unsigned, counterparts of leases, to the vestryman and wardens of Trinity Church.

QUEEN ANNE GRANT

This aged, world-renowned, historical parchment exists. The estimable and worthy aims of the governor, in donating to Trinity Church a place in the province for the maintenance of christian worship, was most commendable. Many may differ with respect to the uses and purposes made of this great gift. The writer, with great temerity, his chief characteristic, and with profound respect and hesitancy, approaches a discussion of this parchment. Only the exigencies of the situation force the presentation of matters involving the origin and legality of this gift, from an historical standpoint, merely because of the shelter the use of this parchment afforded the acquisition of the farm inherited by the children of the original patent owner.

From the record of this case, the first reference to the Queen Anne grant, strange as it may seem, appears in the complaint of the plaintiff in that action, thusly:

That the corporation on or about the 23d of November, 1705, by their corporate name of "The Rector and Inhabitants of the city of New York, in communion of the Protestant Church of England, established by law," accepted and received the letters patent and grant of Queen Anne, bearing that date, executed by Edward, Viscount Cornbury. then captain-general and governor of the province of New York, delivered to the corporation and duly recorded in the office of the secretary of state. By which grant, there was conveyed to that corporation, all that parcel of land situated on the Manhattan Island, now city of New York, then known by the name of Duke's farm, King's farm, or Queen's farm, and bounded on the east partly by a street called the Broad Way, partly by the common, and partly by the swamp, and on the west by Hudson's river.

The bill further stated that this grant was the one referred to in the above written claim, and in its description are included the lands described in the transport to Gov. Lovelace, and the corporation under and through the latter claimed all the rights and titles conveyed by the deed of transport.

That in the year 1705, the church corporation entered upon those real estates, under the instrument of transport by those heirs of Anneke Jans, and under the letters patent and grant of Queene Anne, and thereby became seised of the title of those who conveyed by the transport and became tenant in common with Cornelius Bogardus, son of Anneke; and thereafter held the estate as such tenant in common, with the successive heirs of Cornelius.

That Trinity Church was incorporated May 6th, 1697, by a charter granted by Gov. Fletcher; which was confirmed by an act of the colonial assembly, passed June 27, 1704. The name of the corporation was altered March 10, 1788, by an act of the legislature, and again by an act of 25 January, 1814, to its present title. By the charter of 1697, the real estate of the corporation was limited to £5,000, annual value; but the act of 1704 reduced it to £500, which provision has ever since been in force. The corporation accepted the latter act, especially as it is recited in the Queen's grant, under which they hold the lands in question.

That by letters patent, of Queen Anne, the whole of the King's farm, (including Cornelius Bogardus' share,) and also the king's or queen's garden, so called, were granted to the corporation, the latter lying south of the tract granted in the charter and extending to the Hudson river.

Here again, upon the opening pages of this case, though it be for an accounting, on the theory of a tenancy in common, we find the plaintiff, in his complaint, alleging that Trinity's grant, not alone included the lands described in the Lovelace transcript, the Bogardus Farm, but Trinity in possession of this very farm, from 1705 the date of the Queen Anne grant, thusly, by such admission, not only eliminating all question as to the validity of the Lovelace transcript, but rather putting the seal of approval thereon, and narrowing the issues down to the mere character of Trinity's possession, whether as tenants in common or adverse.

When this peculiar state of facts first confronted me, I stopped in consternation, and I have never ceased to wonder whether or not, this complaint was drawn by the attorneys for Trinity Church. With that Lovelace transcript born, with Cornelius Bogardus eliminated from the scene of strife, was this to be the closing and realizing chapter in the scheme to build that judicial fort, previously mentioned, to succeed in glossing over, with apparent candor and open confidence, the true state of affairs; to satisfy the non-scrutinizing that justice had been administered with strict impartiality, prompted from a realization, on their part, that their power under the English, since the Revolution, was on the wane.

The power of the English Church, judicially, was once described by Lord Coke, in these words:

"The established Church of England is much to be applauded, that they have always had as their counsel some of the most discreet and subtle judges, who, however, the State might enact laws against them, always found means to subvert them and destroy their force."

Annulling Act

Following the issuance of Gov. Fletcher's lease, much controversy prevailed throughout the province over the question of its legality, and as the following declarations appear in the opinion in this case, brief reference to this controversy is here made:

Next is the act of the colonial assembly, passed May 12th, 1699, "for the breaking, vacating and [729] annulling several extravagant grants of land made by Colonel Fletcher, the late governor of this province under his majesty." Among such grants recited in the act, is that to John Evans, and the lands granted are described as "adjacent to the King's Farm, formerly called the Duke's Farm, on the Island of Manhattan"; and Governor Fletcher's lease to Trinity Church in August, 1697, is also called "an extravagant grant of the King's Farm." (1 Van Schaack's Colonial Laws, 31.)

This statute exhibits in the strongest light the assumed ownership and possession of the farm in question by the Duke of York, and then by the kings of England, and the entire publicity and notoriety of such title and possession. The legislation of the colony, sitting within half a mile of the King's Farm, could not be mistaken as to these facts, when they were making a law which was to annual the late governor's demise of the farm, and to regulate its future tenure.

There is one further objection to the grant, founded upon the act of the colonial assembly, [737] heretofore mentioned, passed May 12, 1699, by which it was provided that it should not be in the power of the provincial governors to grant or demise the King's farm, and certain other lands, for any longer period than for their own time in the government; and declaring that such lands were for the benefit and accommodation of the governors of the province for the time being.

This act was repealed by the assembly on the 27th of November, 1702, and was not in force in the colony from that time to June 26, 1708, when the queen disapproved the repealing act, and confirmed the act of 1699. (1 Van Schaak's Laws, 31, 51.) It is contended that the effect of her disapproval was to undo all that had been done while the repealing law continued in force.

Such a rule of construction, applied to private rights would be denounced as most tyrannical, arbitrary and unjust. For instance, we have an act of Congress requiring a residence of five years to entitle an alien to naturalization. Suppose that Congress, at its late session, had repealed this law, and enabled aliens at once to become citizens, and an

alien now arriving here should take the necessary oaths, become a citizen, and purchase lands; and, at the next session of Congress the act of the late session should be repealed, would not the doctrine that thereby all that was done under the statute while it existed was avoided, be denounced as monstrous and absurd?

The principle is the same in respect of the repeal-
[738] ing act of 1702. Rights acquired under it prior to the queen's disapproval, were as valid and effectual as if the act of 1699 had never been enacted.

It is further contended that the repealing act of 1702 was of no force till it received the queen's assent, and it never did receive her sanction. If the argument held good, it would be suicidal to the complainants, because the queen never approved the annulling act of 1699 till June 26, 1708, and thus the latter act was not in force when the letters patent were granted. But this was not the effect of the colonial legislation. Such statutes were valid and in force until they were disapproved by the sovereign. The governor's approval was sufficient in the first instance.

Trinity Church, as a part of the religious estab-
[742] lishment connected with the state at home, was, from its institution favored and patronized by the government here; and to such an extent, that prior to the Revolution, it was repeatedly the cause of great offense to other religious sects, and of many political struggles and broils in the colony. The grant of the Queen's Farm, was in entire accordance with the uniform policy of the provincial government. It appears, by a paper laid before the clergy convened by Lord Conbury, at New York, in October, 1704, that he had recommended to the Queen to bestow the King's Farm to the use and benefit of Trinity Church. In November, 1705, the grant was made, which from its extent and notoriety, and the hostility already exhibited toward Governor Cornbury in the province, to say nothing of the jealousy of those of other religious denominations, would be likely to reach the ears of the government in England, without much delay. If, therefore, the grant had been made without the previous assent of the Queen, or, being made without it, had been deemed extravagant and improvident, it would doubtless have been revoked within a year or two after its date.

These recitals by the Court, picture the surrounding circumstances, with reference to the final issuance of the Queen Anne grant. Apparently, the court was struggling with the problem of how best to support this grant, in the face of the Colonial breaking, vacating and annulling act, passed May 12th, 1699.

Accepting the Court's opinion, that statutes were valid, upon receiving the governor's approval in the first instance, subject to the approval or disapproval of the sovereign, it had the effect of annulling the original lease by Governor Fletcher of 1698. Such must have been his finding as to the effect of the 1699 act, for we find on page 729 his statement "That on the 9th day of May, 1702, Lord Cornbury, then Governor of the Province, executed another lease of the King's Farm to Trinity Church, conformably to the act of 1699, to continue from May 1st, 1700, so long as he should remain governor, describing it simply as the King's Farm, without any specific boundaries or location."

Likewise we find reference to a previous lease, during the interim, between the Colonial breaking, vacating, and annulling act of 1699, and the repealing act of November 27th, 1702, by the previous Governor, the Earl of Bellomont, in the Documentary History of the State of New York, Volume four, page 1112.

Thus the court held that the repealing act of November 27th, 1702, restored the right to grant this property in fee, upon the governor's approval in the first instance; that this grant of 1705 was an absolute gift in fee, though the vacating act of 1699 was then before the crown, for approval or disapproval. This holding nulified the final action taken by the crown, and legalized the absolute gift in fee of this very property, of which a lease had been vacated as extravagant with Trinity the lessee. Was the court right or wrong? Was this grant of 1705, given in the face of the crown's possible approval of the vacating act of 1699, and disapproval of the repealing act of 1702, conditional or absolute?*

Did the action of the crown make effective the act of 1699, with its proviso that this very property should not be re-granted by any governor, except for his term of office? Did the action of the crown effect any rights acquired during the interim, of the passage of the act, and final action by the crown? Why was the right of approval or disapproval of the acts of the Colonial assembly reserved by the crown, if anything could be done in the interim, to nulify the action to be taken by the crown.

The court's observation, as to the contention "that the effect of the crown's disapproval was to undo all that had been done, while the repeal act continued in force, and that such rule of construction applied to private rights, would be denounced as most tyrannical, arbitrary and unjust," seems in a measure ludicrous in these circumstances, where, evidently, this 1705 grant was issued in disregard and defiance of knowledge that the crown had then before it for final disposition the very act under which Trinity had lost its prior Fletcher lease on this selfsame property.

The taking of this grant under these circumstances, and the contention of the court, in his dire efforts to uphold it, actually nulifies the crown's final determination to uphold and approve of the vacating act of 1699, and disapprove of the repealing act of November, 1702, upon the legality of which latter act the grant of 1705 must stand or fall.

Certainly in this generation, no sane person would claim they could acquire any rights under a law immediately after the Legislature had enacted it, and before the Governor had taken action. This would seem to be a more adaptable simile than that given by the court with regard to rights of an alien. It is apparent that the court was forced to adopt American ideas with regard to private rights, and ignore what the courts have repeatedly declared was the absolute right and prerogative of the British Crown to grant, annul, forfeit, vacate and confiscate lands at pleasure, during this period of British history, and which even now is vested in the British parliament, as the absolute arbiter of what laws they shall make, a condition and circumstance which gave rise to that provision of our constitution, prohibiting the taking of private property, for public use, without compensation.

Did the court take a duel attitude? He holds, in the first instance, that the vacating act of 1699 nulified the Fletcher lease of 1698, and recites the reletting in 1702 of this selfsame property, for the term of the Governor in office, conformably with the act of 1699. Why did he not apply the same line of argument with reference to the grant of 1705, and hold that the grant became a nulity when the crown approved the breaking, vacating and annulling act of 1699, and disapproved the repealing act of 1702? Why hold that the lease was nulified, and refuse to nulify the grant, when the crown had declared its position? The crown was the final arbiter.

Irrespective of whether the Crown's approval of the act of 1699 had a retroactive effect or not, it certainly became effective in 1708, with the Queen's approval, and if the court could hold the act of 1699 with only the governor's approval sufficient to nulify a previous lease, certainly this selfsame act of 1699, with the Crown's approval, nulified

this interim grant in fee, of 1705. Did the Queen's approval of this act render ipso facto void all extravagant grants mentioned in the act of 1699?

We are admonished by the Court, as will be observed from a full reading of the opinion in the appendix[e], that upon this trial it was found necessary to resort to historical works, historical records, and antiquated, antiquarian researches, but the absence of any historical records having to do with the annulment of this grant, seemingly calls for, and justifies the publication here of those parts of the Documentary History of the State of New York, which would establish absolute want of authority, both on the part of the Colonial Assembly, as well as the Governor, to do any act or thing which would divest the crown of this choice, and much coveted farm, which they were wont to hold for the convenience and pleasure of their governors.

The following pages will give the reader some idea of the public furore created by the leasing of this King's Farm, which started with Governor Bellomont, and continued on down until much weightier matters craved the attention of the community at large, The Revolutionary War.

It will be noted that none the least of this wordy war was carried on by The Reverend Vesey himself, whose activities to gain this property for Trinity should have won him a front seat in heaven with a perpetual supply of harps gratis.

COLONIAL HISTORY, Vol. IV, page 327:

Excerpt from letter of the Earl of Bellomont to Secretary Popple: (New York Entries A. 431) dated New York June 27th, 1698.

I desire you would urge two or three things to their lordships above all others, that I might have a power to vacate all Fletcher's grants, which are so extravagant, that the province can never be peopled. * * * * * * * *

He has granted away and sold all the conveniences of a governor here, viz: a farm called the King's Farm, he has given to the church here, but 'tis observable his devotion did not carry him to do it till he heard I was certainly to supersede him part of that farm, which is meadow ground, and a scarce thing here, he sold to Captain Evans Commander of the Richmond Frigate, a character of whom I have sent home by Mr. Weaver in several depositions of his misbehavior here; part of the King's garden too, he has granted and sold to one Heathcote, a merchant, so that I am to be robbed of my conveniences, that is, of a place where to keep a horse or a cow for the use of the family; I shall think Fletcher has the best luck with his insolence and corruption that ever any governor had.

COLONIAL HISTORY, Vol. IV, page 335:

Excerpt from a letter from the Earl of Bellomont to the Lords of Trade (New York Entries A, 414) dated New York, July 1st, 1698:

His Majesty's fort at New York being the house of the Governors, had a large garden for pleasure, fruit and herbage, and might be called the King's domain, Col. Fletcher hath granted away by patents great part of the said garden, the pleasantest part being next to the sea, and expressed its name in the patent (part of our garden) and the remaining part being a garden planted with herbs and fruit trees, he permitted the fences and trees to be wholly destroyed by cattle, after his knowledge of my being appointed a governor, which fourteen years time will hardly repair. A small farm called the King's Farm, which usually supplied the governors with bread corn, some few months before my arrival, he made a lease of to the church, and a small island called "Nutten Island" for the grazing of a few coach horses and cows for the governors family, he would likewise have leased out to one formerly his footman, but the council were ashamed to consent to it, so that is only left undisposed of for the pleasure or conveniency of the King's Governors. This he hath done is a great dishonor to his Majesty, as well as uneasiness to succeeding governors, as the greater grants is a betraying of his trust and invincible obstacle to the settlement and strength of this colony; wherefore, I hope your lordships, on the application of our agent, will be pleased to receive a full information hereof, and so represent it to his Majesty, that a way may be found that these great and mischievous grants may be damn'd and made void since his Majesty hath been so betrayed and deceived in them by the late governor, and that I shall, by your Lordships have his Majesty's commands therein.

I have fresh informations of the merchants of this place designs by applications at home to have Col. Fletcher again Governor, and I find their rage against me so increased that having had the assistance of Mr. Weaver (now appointed agent) as King's council at law in these prosecutions, they endeavor to load him with many false calumnies, and give out they will backen him at hime, to take away his credit with your Lordships, as they would do mine and every mans, that serves the King faithfully in these matters, but as I will be answerable to your Lordships for Mr. Weavers honesty, and integrity, so I hope he will have your Lordships' favor, countenance and protection, and have full credit in his representations of affairs relating to the province, or myself, and I must assure your Lordships that an honest Governor (especially of some party) cannot have a subsistance from the salary and perquisites of this government; yet his Majesty's honor and the interest of the trade of England have been so violated and injured here that notwithstanding all the labor and trouble shall meet with, I shall go on cheerfully to retranch both.

My Lords, I am, with respect, your Lordships,

Most Humble and Faithful Servant,

BELLOMONT.

[CHAPTER 79.]

[Chapter 79, of Livingston & Smith and Van Schaack, where the act is printed in full. Printed in full in Brinley's Bradford, pp. 147,168; Baskett, p. 85. Livingston & Smith and Van Schaack, state that the act was passed May 12, 1699, but from the Minutes of the Council it appears that the act was signed by the Governor, May 16, 1699. Repealed by chapter 126. Livingston & Smith and Van Schaick state that the repealing act was repealed by the Queen and this act was confirmed, June 26, 1708. The portion relating to water pond, repealed by chapter 600. The original of this act is not in the office of the Secretary of State. This copy is made, partly from the enrollment thereof in the State Library, and partly from Brinley's Bradford.]

AN ACT for ye Vacateing Breaking & Annulling several Extravagant Grants of Land made by Coll Fletcher the Late Govr of this Province under his Majtie.

[Passed, May 16, 1699.]

Whereas their Excellencies the Lords Justices of England have by their Instructions unto his Excellency the Govr bearing date ye ffourteenth day of 9 Nmber 1698 directed his sd Excellency to use all Legall Means for ye breaking of extravagant Grants of Land in this province. And whereas there is an Extravagant Grant of Land Sealed wth ye Seale of ye Province made by Coll Fletcher late Govr of this province under his Maty unto Mr Godfrey Dellius bearing date ye 1rst day of Sepember 1696 & registered in the Secreys office Containing a Certaine tract of Land lying upon the east side of Hudsons River between ye Northermost bounds of Saraghtogo and the Rock Rossin Containing about seaventy Miles in Length & goes backwards into ye woods from the sd Hudsons River 12 Miles untill it Comes unto ye wood back and so far as it Goes Bee

it 12 miles more or Less from hudsons River in the East Side and from sd Creek by a line 12 Miles Distant from sd River to have & to hold ye sd land & appurtance unto him the sd Godfrey Delius his heires & Assignes of ever under the rent of one raccoon Skinn per Annum. And whereas there is another Extravagant grant of land made as aforesaid unto ye said Godfrey Delius Wm Pinhorne & Evert Bancker &c Sealed also with the Seal of the province bearing Date ye 30th of July 1697, & likewise registred in ye Secretaryes office containing a Certaine tract of vacant Land Lyeing upon Moquas River above a place Comonly known by the Name of Orrakkee begining from a place Called by the Natives Owendiere & runs up along the sd river about 50 Miles more or Less to a place Called Arach Sochne & extending in breadth between the sd places Owendiere & Arach Soghne two Miles on each side of the river as it runns to have & to hold the sd Tract of Land & appurtances unto the sd Godfrey Delius, Evert Brancker Wm Pinhorne &c their heires & Assignes for ever under ye reserved rent of one Beaver Skinn for ye first Seaven years & five bear skins yearly forever thereafter [In Brinley's Bradford, Livingston & Smith and Van Schaick the following clause appears at this point, but it is not in the enrolled bill in the State Library:—"That it having appeared before the House of Representatives convened in General Assembly, that Mr. Godfrey Dellius has been a principal instrument in deluding the Mohaque Indians, and illegal and surreptitious obtaining of said Grant, that he ought to be, and is hereby suspended from the exercise of his Ministerial Function in the City and County of Albany."] and whereas there is another extravagant grant of Land Made in Manner aforesaid unto Coll: Nicholas Bayard bearing date the 12th day of December, 1695-6, & registred in ye Secreys Office Containing a Certain Tract of Land Scituate Lyeing & being upon ye Creek comonly called & known by the Name of Skoharee wch runns into ye Maquac River about 24 Miles above Schenechtidey begining at ye Mouth of ye sd Creek from ye Indian feilds Called Jeandarage & extending upwards on both sides of ye sd Creek to ye head or first Spring thereof where it ends at or Near the hill Comonly known by the Name of Kanjearagore the whole being bounded on the North by ye sd Indian feilds of Jeandarage on ye East & west by ye ridge of ye Hills & South by the Hill Kanjearagore & ye same Erected into a Lordpp or Manner by ye Name of ye Manner of Kingsfeild to have & to hold the sd tract of Land & Lordpp & Manner unto him ye sd Nicholas Bayard his heires & Assignes forever under the reserved rent of one Otter Skinn p Annum. And whereas there is another Extravagant Grant of Land Made in Maner aforesd unto Capt John Evano' bearing date the 20th Day of Sepmr. 1694 Registred in the Secreys office Containing all that tract & percell of Land scituate lyeing & being upon the west side of Hudsons River begining from the South side of ye Land Called the Palse now inhabited by frenchmen & extending thence Sotherly along the sd Hudsons river to ye land belonging to ye Indians at the Murderers kill & extending westward to the ffoot of the high hill's called Pitkiskaker & Aiaskawasting thence extending southerly all along ye sd Hills & the river pekadasank to a water pond lyeing upon the sd Hills Called Merclary Comprehending all those lands Meadows & woods called Nescatonck Chavangen Memorasinck kakagh getawan annuck and Gillatawagh & all & every of them & ye Same erected into the Mannor or Lordpp of ffletcherdon to have & to hold the said tract of Land & mannor off ffletcherdon wth appurtances unto ye sd John Evans his Heirs & Assignes forever under ye rent reserved of one fat buck per annum & whereas there is one other Extravagant grant of Land made in Manner aforesaid unto ye sd John Evans bearing date ye 9th day of August 1694 registered in the Sec'rys office containing a Certain Swamp & ffresh pond called ye ffresh water & adjacent to ye Kings ffarm formerly Called the Dukes farm on ye Island Manhattens beginning at a Stake set in ye ground [the remainder of this act is copied from Brinley's Bradford. The enrollment thereof in the State Library ends at this point.] **On the south side of the said Pond, and at the northeast corner of the Land belonging to William Merritt, thence it rangeth along the south side of the said Swamp and Pond by the upland, to the Beech, on the east side of Hudsons River, so along the Beech to the upland, thence crossing a small gut of said Swamp to the Land on the east side thereof thence by the said Land, as it runs to the east side of the Tanyard, and thence to the place where it begun.** To have and to hold the said certain Swamp and Pond and Appurtenances unto him the said John Evans his Heirs and Assigns forever, under the yearly reserved Rent of one Pepper Corn. And whereas there is another extravagant **Grant of the Kings Farm,** in manner aforesaid, being a **Lease or Demise of the said Farm** unto the Church-wardens and Vestrymen of Trinity Church for seven years from the date thereof, being the 19th of August 1697. Registered in the Secretary's Office, To have and to hold the said Farm and Appurenances into the said Churchwardens and Vestry-men of Trinity Church, their Successors and Assigns, for the term of seven years from the date aforesaid, until the said term of seven years be fully ended, under the yearly reserved Rent of sixty Bushels of Wheat. And whereas there is another extravagant Grant of Land out of the Kings Garden, in manner aforesaid, unto Coll. Caleb Heathcote, bearing date the 2d of April, 1696, and registered in the Secretary's Office, containing a certain Lot or Toft of Ground lying without the Stockadoes of the City of New-York, near adjoyning to the Locust Trees, which were formerly part of the Kings Garden, containing in breadth forty one foot, & in length fifty foot. To have and to hold the said Lot or Toft of Ground unto him the said Caleb Heathcote, his Heirs and Assigns forever, under the yearly reserved Rent of one Shilling. And whereas there is another extravagant Grant of Land out of the said Kings Garden, in manner aforesaid, & of the date aforesaid, unto the said Caleb Heathcote, being a Demise or Lease of another part of the said Kings Garden for the Term of forty one years, which lies vacant and unimproved being bounded by the Stockadoes or Fence of the said Garden so far as the said Garden, in the reer, does extend, and from the said Fence of Stockadoes so far into Hudsons River as low Water-Mark, To have and to hold the said other part of the said Garden unto the said Caleb Heathcote his Heirs and Assigns, for the said term of forty one years from the date of the said Demise, under the yearly Rent reserved of four Shillings.

And whereas it does appear unto his said Excellency and Council that all and every of the above-recited several and respective Grants and Demises of Land and Premises, to all and every the Person and Persons aforesaid, their respective Heirs, Successors and Assigns, are in fact and deed absolutely extravagant Grants issued by the said Coll. Fletcher, late Governour of this Province under his Majesty, contrary to and against the Trust reposed in him by his said Majesty, and are extravagant Grants according to the true intent, meaning and Construction of their Excellencies the Lords Justices of England said Instructions, and as such ought to be broke, vacated, annulled and made of none effect forever. Be it therefore Enacted by his Excellency

the Governour and Council, and Representatives convened in General Assembly, and it is hereby Enacted by the Authority of the same. That all and every of the several and Respective extravagant Grants of Land and Premises, granted, demised and sealed, in manner aforesaid and heretofore recited and mentioned, within all and every of their several and respective limits and bonds afore-mentioned, & expressed are hereby brake, vacated and forever annulled, and of none effect, And all and every the afore-recited Grants and Demises, in manner aforesaid, for all and every the several and respective Tracts & Parcels of Land, Farms and Garden, with Appurtenances within all and every of their several and respective limits and bounds aforesaid. And all the Lordships, Mannors, Jurisdictions, Powers Authorities, Rights, Benefits, Profits, Advantages belonging unto them or either of them shall forever hereafter cease, determine and become null and void, and of none effect, to all intents, purposes and constructions whatsoever, as if no such Grants Demises and Registers of the same in the Secretarys Office had ever been done. And they the aforesaid Grantees, Lessees, and every of them, their and every of their Heirs Successors and Assigns are forever hereafter divested of any Right, Title, or Claim unto the same, or unto any part or parcel thereof within the several and respective Limits aforesaid, any Law to the contrary hereof in anywise notwithstanding. And his Majesty is hereby fully and immediately Re-seized & Repossessed of all and every of the before granted and demised Premises, in as full and ample maner as if the same had never been granted and demised.

And be it further Enacted by the Authority aforesaid, That all and every of the Grants & Demises for the several and respective Tracts of Lands, Swamps, Farms and Gardens, as aforesaid, which are Registered in the Secretary's Office, shall upon the Publication hereof be obliterated, razed, defaced, and the Memory or Record of all and every of the aforesaid Grants shall be reduced into Oblivion and Forgetfullness, as if no such Grants had ever been made or registered in the said Office, any thing to the contrary hereof in any wise notwithstanding. And to the intent that it may not be in the Power of any of his Majesties Governours or Commanders in chief, for the time being hereafter, to make for the future any such extravagant Grants of Land, as aforesaid, Be it further Enacted by the Authority aforesaid, **That it shall not be in the Power of any of his Majesties Governours or Commanders in chief, which shall hereafter be Governours or Commanders in chief of this Province under his Majesty, his Heirs and Successors to grant or demise for any longer than for his time in the Government, any of the Lands hereafter mentioned, that is to say, Natten-Island, The Kings Farm, the Kings Garden, The Swamp and Fresh Water, as they are now limited and bounded, being the Denizen of his Majesties Fort at New-York, and for the benefit and accommodation of his Majesties Governours and Commanders in chief for the time being; and if any such Grants or Demises for the future shall be made longer than for the timeafore-mentioned, then all and every of such Grants shall, ipso facto become null and void, and of no use to all intents and purposes whatsoever, any Law, Custom or Usage to the contrary hereof in any wages notwithstanding. Saving to the City of New-York the Right they have to the Fresh Water, and Lands to low Water Mark behind the Kings Garden.**

* * * * * * * * * *

COLONIAL HISTORY OF THE STATE OF NEW YORK, Vol. IV, 490

Excerpt from letter of the Earl of Bellomont to the Lords of Trade, New York, April 13, 1699:

Mr. Vesey, the minister here has told me he has been urged very much by the angry people here to complain home of my design in vacating Colonel Fletcher's lease to the church here of the governor's demesne, called the King's Farm, and by other hands I am told, they propose to raise a storm against me upon this very account, and to embroil with the Bishop of London: and they argue thus, Sir Edmund Andros for quarreling with Dr. Blair in Virginia brought the resentment of the Bishop of London and the church, (they say) on his head, which is the reason he has lost his government, and by the same rule they would get me recalled by making this a church quarrel. But give me leave to inform your Lordships rightly of this matter. Colonel Fletcher would never part with this farm during his own government, until November 1697, that he heard for certain I had the King's Commission for this Government, and then he makes this lease to the church, and antedates it in August; so that his kindness to the church was to be at his successors cost, not at his own. Besides, Mr. Attorney General assures me that in Colonel Dongan's time, he, to make his court to King James desires this farm might be appropriated to the maintenance of a Jesuit school; But King James (biggot though he was) refused, saying he would not have his Governors deprived of their conveniences. As to Mr. Bayards complaint against me, when I know what it is I doubt not to answer it to your Lordships satisfaction in all points. And as to the petition of some merchants in London against me I cannot conceive upon what they ground their complaint, or who the persons are, but I must believe there is something personal in their prejudice to me. I know there is a sort of men called Jacobites that hate me for several reasons, and one is because I don't love them. I did imagine that the suppressing of piracy here and checking unlawful trade, would render me odious to the merchants in London; but so long as I walk by the rule of the law, and have the testimony of a good conscience nothing can daunt me; and when the King is dissatisfied with my services here, I obey the least breath of a command from his Majesty, and in all circumstances will preserve a steady and inviolable duty for his Majesty's person and government.

I am with great respect my Lords,
Your Lordships most humble and obedient
servant—Bellomont

New York April 13th, 1699.

COLONIAL HISTORY OF THE STATE OF NEW YORK, Vol. V, Page 7.

Answer of the Agent of New York, to a Memorial against the act vacating certain grants of land:

TO THE Right Honorable Lords Commissioners, for Trade and Plantations:

The answer of John Champante, Esq., agent of his Majesty's Province, of New York, to the Memorial of John Montague gentleman, on the behalf as is pretended of several hundreds of the owners of land, and principal inhabitants of that province, touching some Acts of the Assembly there, beginning the 2nd of March '98, and ending the 16th May following.

My Lords:

In obedience to your Lordships orders, I shall humbly endeavor to offer some reasons for your Lordships appro-

bation, of the Act entitled "An Act for the Vacating Breaking and Annulling of several extravagant grants of land &c. now under your Lordships consideration, which I hope may serve as an answer to that part of the gentleman's long and elaborate argument that respects this act.

* * * * * * * * * *

But my lords, if the extravagancy of these grants by reason of the vast extent of lands they pass away, and anotherwise sufficient appear, I presume the other grants will prove no less extravagant when the nature of them comes to be considered; for they have passed away the very demesne of his Majesty's fort at New York, and stripped the present and all his Majesty's future governments of almost all manner of conveniences of living; by one grant a lease is made to the Church of the King's Farm, which used to supply the governors family with corn, and the adjoining meadow part of it by another, is made away to Capt. Evans, and a third grant to Colonel Heathcote takes away even a part of his Majesty's garden which serving for sallading and such like necessaries and in the generous fit, the late governor, was in upon the news of a successor. Nutten's Island, the only remainder of his Majesty's demesne would have gone if the then council there would have carried their compliances, but never so little farther.

* * * * * * * * * *

The Act according to the instructions vacates and annuls these, and the other grants, and his Majesty is thereby fully and immediately re-seized and re-possessed of all and every the before granted and demised premises, in as full and ample manner as if the same had never been before granted and demised; which clause vested no more in the crown than it was in possession of before the said grants were made, cannot be therefore construed to extend to the Mohacks lands, but leave the rights of these, and of any other lands in the act mentioned to stand as it did before the grants were made, and so both the government there and the Indians themselves have understood it; these have by a public address to the Lieutenant Governor and council thanked the King their Lord and the Governor for restoring to them their lands again; and declare that what they did was by the consent and knowledge of their whole nation.

* * * * * * * * * *

Your Lordships most humble and most faithful servant,

J. Champante.

October 26, 1700.

COLONIAL HISTORY OF THE STATE OF NEW YORK, VOL. V, PAGE 14.

MR. CHAMPANTE'S OBJECTION TO MR. SOLICITOR GENERAL'S REPORT

Objections taken to Mr. Solicitor's General's report, relating to several acts of the General Assembly of New York:

* * * * * * * * * *

4th. As to that part of the report relating to Mr. Heathcote's grant which recites that the Act calls it an extravagant grant without expressing in what it is extravagant, it is conceived that the Act fully sets forth the nature of the extravagancy, and the reason of the presumption, by declaring it to be out of the King's garden and part of the same; and the denomination it has in the very grant itself is expressed by these words PART OF OUR GARDEN; it is further objected against the words in the said paragraph viz: but nothing of it was proved that they ought not to be inserted because the lands being part of the King's Garden, and therefore present and necessary for the King's Governors, was proved as aforesaid and as to the remaining allegations of the paragraph they were grounded on the affirmations of both sides which were equal proof.

5th. As to that part of the report, relating to the grant of the King's Farm which sets forth the vacating of it by the said Act for being extravagant without expressing in what, it is likewise conceived, that the Act declaring it to be the King's Farm does herein sufficiently express the extravagancy of the said grant, and the allegations against the said act recited in the report were without proof, and are contrary to matter of fact.

6th. As to the allegations in general against the said act, they are all without proof, and therefore ought not to be so much insisted on, as they seem to be in the said report, which as is conceived, should not take notice of any allegations against the general sense of the province, expressed by their representatives, without the highest proof imaginable, and it is apprehended that the allegations for the said act are not set forth with the proof, nor as fully as they were offered.

J. CHAMPANTE.

Page 15.

ALLEGATIONS WHICH OUGHT TO HAVE BEEN INSERTED IN THE REPORT OF THE SOLICITOR GENERAL.

Allegations which of right as is conceived ought to be inserted in Mr. Solicitor General's report relating to several acts of the General Assembly of New York, if the objections offered to the same by the agents of the said province be overruled:

The act chiefly objected against is the act for vacating etc. several extravagant grants etc.

* * * * * * * * * *

Mr. Heathcote's Grant

Allegation:

But for the said act it was said that the said land being part of the King's Garden was pleasant and absolutely necessary for the governor, being the only conveniency left him for either fruit or salad, and as being part of the King's demesne neither could, nor ought to have been granted away, and for the charge he had been at, it was supposed that Mr. Heathcote had reimbursed himself by the profit received.

As to the words, but nothing of that was proved, the said agent refers to his fifth objection against the said report.

Lease of the King's Farm

Allegation.

But for the said act it was said that this farm was likewise part of the King's demesne, and therefore a great breach of trust in Colonel Fletcher to grant it away, that it was likewise necessary for the present governor's conveniency for the support of his family, and that he had settled on the minister in lieu of the said grant about thirty pounds per annum, which was above twenty pounds per annum advantage to the said minister.

* * * * * * * * * *

COLONIAL HISTORY OF THE STATE OF NEW YORK VOL. IV—526.

CHURCHWARDENS AND VESTRY OF TRINITY CHURCH, NEW YORK, TO ARCHBISHOP TENISON.

[Bib. Lambeth: No. 942. (149.)]

My it please your Grace.

The English nation for above Thirty Yeares had been possessed of these Countreys without any place for public worship of Almighty God, in this City, except the Chapel in the Fort, built by the Dutch, and ('till lately that they built another,) alternatively used by both nations for the exercise of their religion, so that though the English grew numerous, the government in their hands and the national laws took place, yet for want of a Temple for the public Worship according to the English Church, this seemed rather like a conquered Foreign Province held by the terrour of a Garrison, than an English Colony, possessed and settled by people of our own Nation.

That which for soe many yeares had only been wished for, without any reasonable hopes or expectation of effecting, Coll. Fletcher by his great zeal, generous liberality, and indefatigable industry, in the latter part of his government brought so far to perfection that before his departure, he was divers times present, (to his own and the general satisfaction of the lovers of the English Church and Nation) at the public worship of God, in an English Church, of which (if we must not say he was the sole founder,) it is an offence to truth, and an injustice to him not to affirm that he was the principal promoter, a most liberal benefactor to it, and that without him, to this day it never had had a being. As it owed its beginning to that gentleman, so we must acknowledge its growth and increase is not a little in debt to Mr. Vesey, our present Minister, who, by his good parts and bearing, exemplary life, and inoffensive Conversation gives a reputation to his function, and has brought many into the bosom of the Church. So far as this, the subject we write of to your Grace is extream agreeable and pleasing, and it is our inexpressible grief that we are forced to offer anything of a contrary nature.

The fair character common fame gave our present Governor, billed us with hopes of enjoying a large share of prosperity under his conduct; and in particular that the English Church might have flourished under his administration, but experience has udeceived us, and we find ourselves under all the discouragements imaginable.

Whether this our unhappiness proceeds from the irreconcilable aversion this Nobleman has to our late Governor, Co^{ll} Fletcher, who gave birth to this Church, from his own inward principle, or other causes, we will not presume to determine, but this we are too well assured of, or at least our fears make us apprehensive, that nothing less than the destruction of this fair beginning is intended.

Not to trouble your Grace with many other instances, this following gives us abundantly ground for our belief. Coll. Fletcher towards the finishing of this Church gave a lease for **Seaven peares of a small farm,** (usually a perquisite to the Governor) rendring the usual rent **which** was **12 ^{lb} p^{r} Annum,** and the highest it ever before had been lett for. The former tenant's time expiring this spring (when the lease to the church begins,) the churchwardens at an auction lett the farme to him who publickly bid the most for it, which was Twenty-five Pounds for the ensuing year; but the tenant coming to enter upon it, has been kept out by the Earl's order; who continually exclaims at this Lease, as if the sacred Patrimony has been most horribly invaded, when indeed had it been leased to the meanest Clown at the same rent, it had passed in all probability unregarded. It is not creditable that such a trifle as Thirteen pounds per Annum, which is all the advantage can be made of it, can so much concern His Excellency, but a further design must be at the bottom, of which we have to many indications, and were this manner of dealing from a profest enemy of the Church it were naturall, and what rationally might have attended. But being the actions of a person (lately) a constant hearer and usual Communicant, its the more surpriseing.

We humbly lay this matter to your Gracious Consideration, earnestly beseeching your Grace, as we are part of that Church and Nation, over which God in a most eminent station has placed you, we may be safe under your protection, and that this hopeful foundation of an English Protestant Church in these parts of the world may receive no mischief from those whose duty oblige them to give it assistance and further its welfare.

To prescribe methods we can lay no claime to, but humbly submit all to your Grace's piety and wisdom, not doubting but the Almighty God will inspire you to take such measures as will bee for his own glory and his Church's good; to the disappointments of its Enemies. For the effecting of which, we heartily implore both your prayers and endeavours, being in all duty,

May it please your Grace,
Your Grace's most obedient
dutiful and most humble
Servants.
The Churchwardens and Vestry of Trinity Church in New Yorke

Richd Willett
W. Nicholl
David Jamison

Th^{o} Wenham
Robt Lurting
Jeremiah Tothill
Ebenezer Willson
Wm Huddleston
Will Anderson
Lancaster Symes
Ja: Emott
Will. Morris
Th^{o} Burroughs.

New Yorke
May 22^{d} 1690.

* * * * * * * * * *

COLONIAL HISTORY, VOL. IV, PAGE 463.

13.

Prooved by
- Attorney Generall's Memorial about grants of
- The land plat of lands and lists of grants
- Mohacks Henry, Joseph, & Interpretress's depositions
- Ranslaers grants
- Patents of King's Farm and King's Garden
- Charter of Dutch Church
- No. 7, referr'd in letter 21th Oct. 1698.

The plat of the Province and the list of the lands granted by Colonel Fletcher will demonstrate that it is apparently untrue that almost all the valuable lands of New Yorke were granted away before his entring on that government.

It is likewise incredible that Colonel Fletcher did not know that the grant to Colonel Heathcote was part of the Kings garden, for that the words of the grant are, **Part of Our Garden.**

The deceit used by Mr. Dellius in the grant of the Mohacks lands is discovered in the depositions of Henry and Joseph, Indians, and the Interpretess all Christians, and in the printed conference of the Indians with the Earl of Bellomont.

The King's farm was leased out by Colonel Fletcher even when my Lord Bellomont was known to be on his voyage for New Yorke, as most of the other great grants were, after the Earl's designation to the government. Colonel Fletcher assumes the glory of building Churches which never was imputed to him as a crime, if it was true; but the Church of New Yorke was not built by him, but by a contribution of severall even of the French and Dutch Churches aswell as English, and an allowance of one hundred pounds pr annm given to an English Minister by an act of the country, which is levied, the greater part of it, on Dutch and French inhabitants. Therefore there was no necessity to lease this farm to the Church Wardens, nor to call this lease a building of Churches, and make that the pretence of hindring a succeeding Governour from the beneficial use of the farme for the conveniency of his family.

Besides Colonel Fletcher accepted a considerable present of plate for granting a Charter to the Dutch Church of that City, as appears by their Church Books.

Colonel Fletcher saith he never had any reward for grants of lands, but common report at New Yorke saith otherwise and particularly that Captain Evans gave one hundred pounds for his grant and the Earl of Bellomont's letter to your Lordships of the 8th of Novr 1698. speaks of two or three grants that he hath discovered to be bought after such a rate that Colonel Fletcher may be supposed to have gained four thousand pounds by grants of land, and reserved no considerable Quit-rents to the King, as appears by the grants: No regard was had to the great quantitys of land, for that Mr. Dellius who was one of the grantees of the Mohacks land, has, in lands granted to him, the quantity of seven hundred thousands of acres.

Colonel Fletcher lays the blame of all defects in the grants of lands, but common report at New Yorke saith attending the Council by Colonel Fletcher's order, and seldome any reference made to him on petitions for grants of land, (as was usuall in other Governour's time) but had positive orders to draw up grants of land after the manner the Governor commanded him; the whole proceedings of which he sets forth in his Memorial.

* * * * * * * * * *

COLONIAL HISTORY OF STATE OF NEW YORK VOL. IV, PAGE 510.

LETTER OF THE EARL OF BELLOMONT TO THE LORDS OF TRADE:

12th of May 99. In obedience to the commands of the Lord's Justices of England contained in their Excellencys letter of the 10th of last November; I did with the advice and consent of the Council direct the Attorney General to prepare and bring in a bill for vacating the Extravagant grants of lands by Colonel Fletcher to Mr. Dellius the Minister at Albany, to Colonel Bayard, to Captain Evans, to Collonell Cabel Heathcot, and to the Church. The two last were the Governor's demesne, one by the name of the King's garden, and that to the Church the King's Farm, and though, these two be the smallest grants, I always thought it a greater impudence in Fletcher to give away the conveniences from the King's Governors, than in granting away a large tract or two of land. The Council were equally divided, three against three, so that I was obliged to give a casting vote for the Bill. Those three that were against it have the largest grants in the Province next to Mr. Dellius's. We sent the bill down to the House of Representatives where it met with a chearful concurrence they adding a clause to deprive Mr. Dellius of his benefice at Albany; to which clause the Council and I agreed. The minute of Council directing Mr. Attorney to draw this Bill goes (No. 7) by which your Lordships will see I have got it made to tye up my own and all succeeding Governors hands from granting away or so much as leasing the demesne of the Governor for more than his own time in the Government.

I did not think fit to put the regulations ordered in the Lords Justices letter to me in the granting of lands into this Bill, for two reasons; first because this being to breake but a small part of the Extravagant Grants and intended only as an essay to find out how it will relish with the people, I thought it would be best to defer the making those regulations part of a bill, till I should try another Session, to vacate all the other extravagant grants which are about 8 or 9 in number. In the next place I was apprehensive those regulations (one whereof is that every hundred acres of land shall pay a Quit rent of 2s 6d pr ann: to the Crown) might allarm the members of the Assembly and prejudice them against such a charge on their lands. The getting this Bill pass'd has drawn upon me the implacable hatred of all parties concern'd and the rest of Fletcher's Palatines, those I mean that have unmeasurable grants, fancie I shall push at them the next time, so that they are equally angry with the others. And as for the King's Farm granted to the Church the whole faction I understand are resolv'd to bring on my head the anathemas of the Bishop of London and the Clergy, if they can by any means provoke 'em to resent its being evacuated with the rest, notwithstanding I have given the English Minister much more than an equivalent for what the Act of Assembly has taken away; for by the King's farm he had but £7. pr anñ: rent, and I, with the consent of the Council have allowed him £26 pr ann: to pay his house rent; in which we are warranted by the King's instructions to me. * * *

* * * * * * * * * *

COLONIAL HISTORY OF STATE OF NEW YORK VOL. IV, PAGE 512:

EARL OF BELLOMONT TO THE LORDS OF TRADE.

[New York Entries, B. 390]

To the Right Honourable the Lords Commissioners for Trade and Plantations.

My Lords

Your Lordships I presume will have a full account from Boston of a parcell of pirates lately taken there with their ringleader Joseph Bradish born at Cambridge near Boston. The Commander Bradish ran away with the Ship called the Adventure of London an interloper to the East Indies, leaving the true Commander Captain Gulleck on some island in the East Indies, together with some officers and men that belonged to the ship. They came to the east end of Nassau Island and sunk the ship between that and Block Island. The ship of about 400 ton. I had no notice till a week after the ship was sunk, or if I had had notice I could have done nothing towards the seizing or securing the ship or men without a man of warr, which the Lords of the Admiralty seem to thinke these provinces unworthy of. I send your Lordships three or four depositions concerning the Pirate ship, the most material of those I have taken. The deposition of Symon Bonane a Jew goes (No. 1) that of Captain Mulford (No. 2) that of Cornelius Schelinger (No. 3) that of Lieutenant Colonel Peirson (No. 4). This last the principall deposition, because with him Bradish had left £942 19 3 in mony; The particulars whereof goe (No. 5). The bag

of jewells mentioned in Peirsons deposition were opened before myself and the Councill, where I had ordered a Jew in this town to be present, he understanding jewells well. At first sight we thought there had been £10000 worth, but we soon found they were counterfeit, an inventory whereof goes (No. 6). My proclamation for the apprehending Bradish and crew goes (No. 7). I seized three men in this town, who I had notice were come from Block Island, and had concealed some of those pirates mony, and I secured them here till I gave the Governor of Rhode Island notice where the mony was concealed, which I heare he has since secured; Block Island being in his government. That mony I understand is near £1000. Ten or eleven of the pirates are seized at New London by Colonel Winthrop, Governor of Connecticut and £1800 in mony, as he writes me word. At Boston they have taken 15 or 16 of the pirates, I hear, and 5 or 6000£. The Governor of Rhode Island is said to have discovered and seized another parcell of the mony besides what I gave him notice of, so that 'tis supposed there may be in the whole near £10000 secured for the owners in England, who I hear are Sir Joseph Hearne, Mr. Sheppard and Mr. Heathcote. What I have received from Peirson is lodged with Colonel Courtland the Collector, and shall be forthcoming to the owners upon your Lordship's order, or such other authority as I can be secure in. Lieutenant Colonel Pierson came frankly and voluntarily to me and own'd Bradish had been at his house and left some baggs of mony with him & a bagg of jewells. He has a fair character in the country and is a man of substance and a member of the present Assembly. I frightned him by telling him he would stand in need of the King's mercy, for that by the statute of the 28th of Henry 8th he was equally guilty with Bradish; which is a truth. I hope your Lordships will obtain the King's leave for me to pardon him which is what I will not venture to do to him or any body else without your leave, notwithstanding you are pleased to write to me in your letter of the 25th of last October that I have a power by my commission to pardon pirates, and I assure your Lordships I do not intercede for him upon the score of a reward, for I neither have taken nor will ever take any reward of him. I must observe to your Lordships that five or six of the men that ran away with this ship under Bradish are, as I heare, some of Colonel Fletcher's pirates that went out with Tew and other pirates commissioned by Fletcher. Two or three of 'em have wives in this town and were actually, as I have been informed, in town. I laid out for 'em, but they are too well befriended in this towne to be given up to justice; and I am apt to believe they are still here.

I send the deposition of Daniel Scrogham (No. 8) about a pirate ship at Saltertudos that robb'd severall ships there, and the memorial of John Clotworthy master of a sloop that came hither from Jamaica (No. 9). Hyne the pirate he informs of is a bloody villain, has murthered severall men and will give no quarter they say to Spaniards that he takes. He belongs to this town his wife and family now here; he was master's mate of the ship Fortune which I seized at my first coming here which had been also commissioned by Colonel Fletcher. About three weeks since there came a ship within Sandy Hook, the mouth of this port and lay at anchor three days. The custom house officers sayl'd by her in a sloop and hayl'd her, asking whither she was bound; she answered to the Port of New Yorke, but she n'ere came hither, so that she is supposed to have been a pirate; she was of about a 150 ton. We may be insulted here and the trade destroyed, if we cannot be allowed a ship of war. 'Tis reported here that severall ships belonging to this and the other Colonies to the number of four and twenty are taken by the Spaniards in the Bay Campechi, whither they went to take in Logwood. 'Tis also said the Spaniards are provok'd to it by the Scotch late settlemen on Golden Island near Darien.

I formerly gave your Lordships to understand the badness of the Forts of Albany and Schenectade. The gunner at Albany has sent me word the platforms are so rotten that he dares not fire a gun, and indeed those Forts are so scandalous that I cannot give your Lordships a low enough idea of them. They look more like pounds to impound cattle, than Forts. In my letter to your Lordships by Lieutenant Hunt I made bold to advise that the mony Colonel Fletcher should be found indebted to the King (which I was then and am still of opinion would upon a fair account prove to be 10 or 1200£ Stêrl) might be applied to the building of good stone Forts at Albany and Schenectade and repairing this Fort at New Yorke, which will cost at least £1000 more. 'Tis wonderfull to me how Colonel Fletcher could pretend to apply the greatest part of the 30£ p^r cent, to the repairs of this Fort and the Governor's house, when I found everything out of repair when I superseeded him. The palisadoes of this Fort are quite decayed and a third part of them destroyed and wanting; one of the bastions crack'd through, which will fall if not speedily rebuilt; the parapet gone to decay and must be renewed; the palisados 'tis computed will cost 600£. at least to be well done, and the bastion 200£. and the parapet 200£. The roof of the house too is out of repaire, so that it rains in, and the lowest floor is decayed and rotten, so that I believe the repair of the house will cost near 200£. more. I must not omitt to observe to your Lordships that the old part of the house is a comfortable convenient dwelling enough, and might have contented a Governorr of much better quality than Coll. Fletcher; and the new building will cost first and last about £5000. New Yorke mony; so that 'tis plain here is so much mony consecrated to his vanity. Where all this money will be got to build and repaire Forts, I cannot tell, unless Fletcher be made to refund to the King. The Assembly here I am almost certain will not be brought to raise it, for I cannot prevail with 'em by any means to consent to such an additionall duty as will pay the debts of the government, which amount to upwards of £5000.

I intend pursuant to the orders I have received from the Lords Justices of England, bearing date the 10th of November 98. to indeavour to breake the two excessive grants of land to Mr. Dellius, by Act of Assembly, and also Mr. Bayards of 40 miles long, which comprehends part of the Mohack's land, and whereof they also complained to me at Albany; and also to breake Captain Evans's and the lease of the King's Farm to the Church and the King's Garden to Colonel Heathcote; all granted by Collonel Fletcher most impudently and corruptly. These I believe I shall prevaile to get a Bill to passe for the breaking of. And I will have a clause or clauses to stand in the Bill to disable me and all succeeding Governours from alienating or lessening the demesne of the King's Governour for the time being. When this is done and the before mentioned grants are vacated there will remain these following Extravagant Grants, vizt Colonel Smith's which Mr. Graham the Atturny Gen^ll assures me is 50 miles long and the whole breadth of Nassaw Island, most of it granted by Colonel Fletcher. Then there are besides Mr. Fred: Phillips's and his son Adolphus Phillips's. Two great tracks of land to Coll. Courtland one whereof is 20 miles square as I am told, and the other not much lesse: Colonel Beckman's grant; Colonel Peter

Schuyler's; Mr. Livingston's and Mr. Ranslaer's: all which grants comprise I verily believe full ¾ths parts of this Province, and are one with another (the two leases aforesaid excepted) 20 miles square by the nearest computation I can make; so that I appeale to your Lordships what care has been taken by Côll. Fletcher of the interests of the Crown and this Province. Neither do I find there is 5£ pr annum Quit Rent reserved to the crown upon all these vast grants, put altogether, which is an insufferable fraud in Coll: Fletcher. I observe in that clause of my commission which impowers my granting of lands and directs the reservation of a Quit Rent, the words are "for what yearly Quit Rent you shall think fit." Now the words **You shall think fit**, are very entensive words, and if I be a knave I will fob the Crown off with a Racoon skin pr annum: out of nine hundred thousand acres of land and will thinke fit to compound with the grantee for a good fine to myself. These last mentioned Grants I have neither time nor strength to breake at this time; but if your Lordships will send over a good Judge or two and a smart active Atturny Generall, I will God willing, be back hither from Boston the latter end of this summer and will then have a Session of Assembly and will breake all these Extravagant Grants, and will settle such a scheme by Act of Assembly, as shall tye up my own hands and those of all succeeding Governors; and all that whole matter shall be made under such limitations and reservations as the Lords Justices in their said letter have ordered me. I beseech your Lordships to consider that by obeying your orders in vacating these grants (for I esteem them your orders as well as the Lord Justices, since they were grounded on your Lordships Representation) and all your other orders which tend to a reform of all abuses in this Province, I draw on myself the most virulent odium of all parties concerned which will multiply the clamous and complaints of theirs and the merchants Agents in London. Therefore I must beg your protection in the execution of your own orders that I may be justified and suported by your Lordships against the noise and importunity of ill men or their Agents. I acquainted your Lordships formerly that the factious merchants and others in this town had agreed in their Cabal that they would use a stratagem to get me recalled, which was this: —they would write home by all opportunities to their Agents in England to teize the Ministers with complaints, that importunity might serve instead of reason and argument. I was yesterday again informed the angry people here have sent a petition to their Agent in England against me for disturbing their trade, and several trivial articles not worth the naming to your Lordships; and that 'tis an agreed resolv'd thing among 'em to multiply complaints against me by all conveyances to England, till by pure importunity they get me recall'd: my author who read their petition and was present at their Cabal told me they said they would tyre out the King and the Ministers to gain their point against me.

I made no alteration in the Commission of the Peace or the Militia of the Province till the middle of this last winter, that I might try by all means to make those men whom Colonel Fletcher left in power and office, tractable to the government. But I found the more indulgent I was to those men, the more insolent they and their party grew, and they began to interpret my moderation to be fear. Yet did I not make a totall remove of them, but blended the parties, giving the ballance a little to the Leisler's side as in justice and prudence I thought I was obliged to doe for the King's service; the angry party declaring openly against continuing the revenue to the King, but the Leislerites warmly for it; who have been as good as their words.

The country were very uneasy under the authority of Fletcher's Officers, and I was mightly importun'd to change the officers. As an instance of the people's aversion to their late officers, on the 4th of last November I had the Citty regiment drawn out among other respects to the King's birth day; the regiment consisted that day but of 200 men besides officers, and on the 13th of last February the anniversary of the King's being proclaimed king, I had the regiment drawn out under the new Officers and they were then 500 men. I also have had 'em out on the 11th of Aprill the day of his Majesty's Coronation. The Officers I treat at my own charge, but the Soldiers at the King's. I do not find Colonel Fletcher left me a president for this, but I thinke it a usefull piece of ceremony because it helps to affect the people to the King, and puts 'em in mind of their duty to him; for before they had no idea of any thing greater on earth than Colonel Fletcher, and he seemed to be of that mind himself. I am with respect, my Lords.

Your Lordships most faithfull
humble servant
BELLOMONT.

New Yorke
May the 3rd 1699

* * * * * * * * * *

COLONIAL HISTORY OF THE STATE OF NEW YORK
VOL. IV, PAGE 528:

EARL OF BELLOMONT TO THE LORDS OF TRADE.
[New York Entries, B. 310.]

To the Right Honourable the Lords Commissioners for Trade and Plantations.

My Lords:

I arrived here the 26th instant having left New Yorke on the 16th instant and prorogu'd the Assembly the morning I came from thence. I had writt severall letters at New Yorke to your Lordships upon severall subjects relating to the service of His Majesty and that Province, but having not had time to finish that letter which treats of the affairs of the Assembly, because of prorogueing them just at my coming away, I have since had a fit of the gout by taking cold at sea, so that I cannot well finish my packetts and make 'em up timely enough to send by this ship, but there going another ship next week to England, I shall then give your Lordships an ample account of all matters relating to that Province.

In the meantime let me acquaint your Lordships that the Assembly of New York have settled the Revenue for six years, after the year which is still unexpired of the former term. They have also passed some good acts besides, which I intend shall be transmitted to your Lordships very speedily. One of the acts for vacating the two extravagant grants from Colonel Fletcher to Mr. Dellius the minister at Albany, that to Colonel Bayard which took in also part of the Mohacks land and of which they complained to me, that to Captain Evans, that of the Governor's demsne to the Church called the King's Farm, and lastly that to Mr. Caleb Heathcote which was called the King's Garden; I say the Act that vacates those forementioned grants has rais'd against me the most implacable rage of the grantees and the other people who have grants full as extravagant and ruinous as these to the interest of the Province, are allarm'd, and become as much my enimies as those the Act dismounts of their grants; but having the order of the Lords Justices of England of the 10th of last November for using all lawfull ways to break those extravagant grants,

I value not the resentment of a few undeserving men; being sure 'tis not for the Interest of the Crown or the Province that ¾ parts of the lands and soil should be in the hands of ten or eleven men, as I undertake to make it appear, should Fletcher's grants stand good. Therefore am I for abolishing the rest of the Palatinates (for such vast tracts deserve no less a name) the next session of Assembly, if I have strength enough; but indeed I can promise nothing without a good lawyer to be Chief Judge and to sit in Councill and a good active lawyer to be Attorney Generall. I have stood single on my own legs in all these difficulties, and 'tis impossible for me always to bear all the burthen of businesse. The Bill for vacating the grants begun with us at the Council Board, and we sent it down to the Lower House, and there they added a clause for depriving Mr. Dellius of his benefice at Albany, so that we were obliged to passe that clause as part of the Bill, or we must have lost the Bill, and I thought it better to lose a wicked Clergyman than a good Bill.

One of the letters I have prepared for your Lordships treats wholly of Navall stores wherein I demonstrate plainly that the province of New Yorke is the onely fit place for the King and Nation of England's being supplied with the severall species of pitch, tarr, and rosin, and I beleive for masts of ships too. Mr. Dellius has lately had 90 masts cut on his largest grant, and that on the bank of a river that runs into Hudson River, and they floated down to New York without any charge to him; the biggest was but 26 inches in diameter, but I am told there are much larger on that land and an infinite number of them and 'tis said too, the timber there is much firmer than that at Pescataqua and more solid. I doubt not but my scheme for the furnishing His Majesty with Naval stores will be acceptable to your Lordships, and I will undertake to furnish them within a trifle as the King has 'em now in time of peace from Sweden and Denmark; whereas I beleive at the rate the purveyors are like to have those stores made in New Hampshire, it will cost the King treble the price they now stand him in from the Northern Crown.

In your Lordships letter of the 2d of February last you are pleased to caution me against passing an Act for reimbursing Leisler's party their demand of money due to 'em since the revolution. I am always pleased with your Lordships directions, for to be sure so long as I walk by rule, I shall be less lyable to error. But I could not possibly be guilty of so very foolish a step as that would have been, and the marchands of New York knew well enough that I would never consent to such an Act, neither was such a bill offered to me. I took a great deal of pains to satisfie 'em against such fears by declaring to 'em it was a step no man in his witts would venture to make & that I would not forfeit my discretion and the King's favour for any consideration whatsoever.

Mr. Graham will bear me wittnesse that I charged him severall times to publish my resolution against it, and he assured me he did it severall times to the marchands that Yorke; therefore 'tis to be presum'd those marchands that troubled your Lordships on that score, did it purely for the sake of clamour. I am with much respect, My Lords

Your Lordships most humble
and obedient servant
BELLOMONT.

Boston
May the 29th 1699.

* * * * * * * * * *

COLONIAL HISTORY STATE OF NEW YORK, VOL. IV, PAGE 531:

EARL OF BELLOMONT TO THE LORDS OF TRADE.

[New York Entries, II. 441.]

To the Right Honourable the Lords Commissioners for Trade and Plantations.

My Lords.

A fit of the gout that seized me on the sea between New Yorke and this place prevented my sending two severall letters which I had almost finished at New Yorke, but had [not] time to perfect them because of the Assembly's sitting, which gave me constant imployment to the hour I came from thence. In one of those letters I expressed, as I now do in this, my humble acknowledgments to Your Lordships for the commendation you are pleased to bestow on my poor services at New Yorke, in your letters of the 25th of last October and 5th of January, which is a favour that pleases me abundantly more than any recompence that could be made me, and so great a value do I put on it, that I will never forfeit your Lordships good opinion and protection.

My other letter which I had not quite finished at New Yorke, nor till within these few days, bears date the 3d of May, treats of Bradish a pirate and severall sums of money taken with him and his crew, and goes now by this conveyance.

By the last ship that went hence to London about a fortnight ago, I writ five severall letters to your Lordships on severall subjects, four whereof related wholly to the businesse of New Yorke and were longer than I could have wished them for your Lordships ease; but I hope you will excuse their length, and what may be found crude and superfluous in them, for I am forced to be my own Secretary, and have not time nor health to write foul drafts of my letters & make emendations, and so contract the matter and pollish the stile of them, for such a labour would quite kill me.

There is one of those letters which bears date the 17th of Aprill last, which tho' it be long, will not I presume be unwelcome to your Lordships, because I demonstrate therein that the King and nation of England can be best supplied with Naval Stores from New Yorke, and as cheap or cheaper than they have them at present from Sweden & Denmark; and I find upon discourse with Mr. Bridger the Purveyor who is now here, that at the dear rates he pays for labour in New Hampshire, the Stores will cost very near ⅔ parts more, than they will be afforded, according to my scheme, in my said letter. I have not writ about it to the Lords of the Admiralty or Commissioners of the Navy, for I have had no incouragement to hold a correspondence with those Boards; but have applied wholly to your Lordships, from whose influence and direction alone, under His Majesty, I expect this noble and national designe must receive life and motion.

Severall papers relating to our Five Nations of Indians containing messages between me and them I have brought with me from New York, and severall others which my Lieutenant Governour has lately sent me; all which I designed for Your Lordships by this conveyance; but I find it impossible to get them fairly transcrib'd, they being very voluminous. I believe a quire of paper will scarce contain them. Your Lordships shall have them by the next ship that goes for England. In the mean time I can tell you the French Governour Monsr de Calliere having lately set at liberty those Indians of ours he had prisoners at Montreal, it has put our Five Nations into good humour; severall of the Sachims to the number of 40 or 50 were lately at Albany were much made of and went home very well pleased and declared they would not think of going over to the French. To please 'em and keep 'em steddy to us, I sent 'em word I hoped to prevaile with the King to order a Fort to be built

in the Onondages country where a garison should be kept to cover 'em from the inroads of the French garison of Cadaraque Fort (which is a great terrour and disturbance to them) and they have laid hold on my promise and desired I will perform with them; but I would not have them know the small capacity I am in of doing it, for without mony 'tis impossible to build Forts.

I understand there are about 30 pirates come lately into the East end of Nassau Island and have a great deal of money with them; but so cherished are they by the inhabitants that not a man of them is taken up. Severall of them I hear came with Shelly from Madagascar: Shelly is one of the Masters of Ships that I formerly informed your Lordships went last Summer from New York to Madagascar; he is a dweller at New Yorke, and Mr. Hackshaw one of the Merchants in London that petitioned your Lordships against me is one of his owners, and Mr. de Lancey a Frenchman at New Yorke is another. I hear too that Captain Kidd dropp'd some pirates in that Island. They write from New Yorke that Arabian Gold is in great plenty there, and indeed till there be a good Judge or two and an honest active Atturny Generall to prosecute for the King, all my labour to suppresse piracy will signify even just nothing. The people there are so impudent in abetting and sheltering pirates and their goods, that without such assistance as I have now proposed, I can never expect to check that vile practice of theirs. When Frederick Phillipps's ship and the other two come from Madagascar (which are expected every day) New York will abound with gold. 'Tis the most beneficiall trade that to Madagascar with the pirates, that was ever heard of, I beleieve there's more got that way than by turning pirates and robbing. I am told this Shelly sold rum which cost but 2s per gallon at New York, for 50 shillgs and £3 pr gallon at Madagascar, and a pipe of Madera Wine which cost him £19. he sold there for £300. Strong liquors and gun powder and ball are the commodities that go off there, to the best advantage, and those four ships last summer carried thither great quantities of those things.

In my letter to your Lordships of the 15th of last May, I gave your Lordships an Account, that I had sent as you directed the copies of my letters to the Lords of the Treasury, but being ill myself when that packet was made up, my servant forgot to put up those letters; but I now send them,.that of the 27th of October 98, goes (No. 1) that of the 14th of November 98, goes (No. 2). They mention Mr. Brooks but slightly, because I referr'd their Lordships to the letters I had writ to your Lordships about him; copies whereof I sent them at that time.

There goes with this conveyance a letter to your Lordships which my indisposition hindred me from finishing at my first coming hither, as it did some others I have mentioned before: it bears date the 13th of May and give a particular account of the trade of New Yorke and it concerns me much that your Lordships should be exactly informed of that matter.

I send your Lordships six months minutes of Council, by this conveyance, and also the transcripts of the laws enacted this last Session of Assembly of New Yorke. The Act which breaks some of Fletcher's Extravagant Grants of Land, has much inraged the Grantees against me, but I little value that, being satisfied in my own conscience that 'tis honest and just to dissolve and make void grants that have been fraudulently obtained, and, what is more, having had the orders of the Lords of Justices of England bearing date the 10th of last November for so doing. Mr. Dellius the Dutch Minister at Albany who had the two largest grants, is gon to England to complain and try to hinder the King's approving that Act, which breaks his and some few other grants. The angry people of New Yorke have made a purse of £500 for him and those of Albany £200. not that he had need of it, for by his penury he has got a good deal of money of his own. He has carried home, I mean to England, certificates of his piety and good life, under the hands of the angry people; and I am told there are counter certificates signing by the Leisler party with four times the number of hands to 'em. If a great lyar incendiary and proud person, make up the character of piety then Mr. Dellius may passe for a Saint. I sent your Lordships formerly the conferences I had with the Mohack Indians at Albany and then observed what impudent lyes Dellius told me in the face of all the Magistrates of that town and many other persons. I since sent your Lordships, my Lieutenant Governor's certificate along with my letter of the 13th April last to shew how wickedly Dellius went about to divide my Lieutenant Governor from me, and make him joyne with himself and party against me. Till I went to Albany he always pray'd in Church for the Crown of England, but not for King William. I remember the first Sunday after my going to Albany some of the honest Dutch went to hear him preach (of those I mean that accompanied me from New Yorke thither) and observing he pray'd not for the King, complain'd to me of it. I sent for him and reproved him and his excuse was that it was Sacrament day, and not customary on those days to pray for any body in the Dutch Churches. I could not beleive him then, nor do I yet, but it was a blundering lying excuse like the man that made it. He was one day indeavouring to suborn Henry, a Christian preaching Indian, to swear against two or three of the Magistrates of Albany that are not in his favour, and the Indian came to those Magistrates and told 'em what Dellius had been labouring to make him sweare, and cried out with horrour and amazement, Good God what does Mr. Dellius mean by teaching to lye, and yet pretend to save our souls. This happen'd last summer, and those Magistrates sent me word of it. Dellius has now carried over with him a Certificate or some such instrument under the hands of four Justices of the Peace at Albany of a confession made by Henry and some other Christian Indians, but the other Magistrates hearing of it, about a dousen of them examin'd Henry and the rest and put the examination into writing, which goes (No. 3.) by which your Lordship will see that he tampered and used artifices with them to get them to lament his leaving the Province; and a good part of what he had set down in writing as a confession of theirs they positively deny to have said in this paper. My Lieutenant Governour hearing what contention and heats Dellius had caused among the people at Albany by his ill practices with those Indians, cited him and them to appear before himself and the Council at New Yorke there to be fairely and openly examined; but Dellius absconded and would not appear, getting into the Jerseys to be out of my Lieutenants Governours reach, and from thence he imbark'd for England. His hopes I understand are to stir up the Classis of Divines at Amsterdam and those that reside in London, to take his part. Then he thinks he has a sure friend of the Bishop of London by the means of Colonel Fletcher, and I heare

structions directs) gives the mony to his Majesty with an humble desire that his Majesty will be pleased to bestow it on me, and my Lieutenant Governour. I hope your Lordships will procure the King's leave and order that we may have the advantage of it, & that as soon as conveniently may be; for we stand in need of that benevolence of the countries.

The House of Representatives sent up a Bill to me and the Councill for settling a Dissenting Ministry in that Province, but it being contrary to his Majesty's instructions, and besides having been credibly informed that some of those Ministers do hold strange erronious opinions in matters of Faith and Doctrine, I would not give the Assent to that Bill, but rejected it.

I must intreat your Lordships to recommend Mr. George Tollet to his Majesty to be Secretary of the Province of New Yorke in the room of Mr. Clarkson the present Secretary, who is so very weak a man and incapable of businesse, that he never was thought fit to be of his Majesty's Council of that Province. I have forbore all this while to endeavour the displacing of him, in pure charity to him, but I am so tyred out with businesse and he perfectly uselesse to me, that I must again request your Lordships to let me have the assistance of a man of sense and businesse. Every body knows that a Secretary of a Province ought to set in Council and that he ought to be very honest as well as able, and being so qualified he is, as it were, the Governour's right hand. I beleive Mr. Tollet is known to most of your Lordships; he was Secretary to the Commissioners of Accounts, and they valued him as a jewell. He is an excellent mathematician and no man in England a readyer accountant. He is a very honest man, very judicious, and of great application in businesse. I am not certain he will come over, but if he will, I know no man more capable of serving the King. He would canvasse the accounts of the Province from time to time and now that there will be lands to be distributed, he would survey 'em nicely well. If Mr. Tollet will accept of the Secretary's place, I hope your Lordships will please to give him all reasonable incouragement; I mean 2, or £300. to be procured for him from the Treasury to pay for his commission and bear his charges to New Yorke. All the while I was at New York I was perpetually in businesse from five in the morning till ten at night (except dining time) and that which gave me the greatest trouble was the answering letters from the English and French Governours, which I was every post or by ships obliged to do, and that with my own hand, for I had nobody to help me. There are three Lieutenancies now vacant in four Companies at New Yorke. I do not, as others have done, prefer my Valet de Chambre and servants to those posts; but I am sending to England to get an able Master Gunner or two for the Forts at Yorke and Albany, and a good Surveyor put into those postes. I contrive as well as I can for the King's interest and service.

I am next Thursday to go to New Hampshire to take that government upon me, where I propose staying about three weeks, and will, if my health will allow it visit the very utmost bounds of the King's territory to the East and joyning upon Accadie, which the French have unfortunately got from the Crown, thanks to good King Charles the 1st. 'Tis called St. Georges River[1] and lyes about 25 leagues eastward of Pescataqua.[2] At my returne hither I shall make but a week's stay and shall then go to Rhode Island to execute a commission from his Majesty sent me by Mr. Secretary Vernon to inquire into the severall misdemeanours alledged to have benn committed by the government of that Island.

I forgot to tell your Lordships in the body of this letter, that since my leaving Yorke Mr. Clarkson the present Secretary struck Mr. Parmiter the Naval Officer a blow in the face, just by my Lieutenant Governours Chamber door, within his Majesty's house and Fort, which is no lesse an insolence than if he had struck him within Whitehall, for one is as much the King's house as the other. I am with respect

My Lords
Your Lordships most humble
and obedient Servant
Bellomont.

Boston
July 22d 1699.

* * * * * * * * * * *

COLONIAL HISTORY, STATE OF NEW YORK, VOL. IV, PAGE 813:

NOTES OF WHAT PASSED BETWEEN THE EARL OF BELLOMONT AND MR. GRAHAM.

[New-York Papers, N. O.; O.44.]

Notes of what passed between Mr. Graham and the E. of Bellomont ab^t the Bill for breaking some of Coll: Fletcher's extravagant grants of land. [4 May 1699.]

On Thursday the 4th of May 1699 Mr. Graham the Attorney Gen^ll was call'd up by me after dinner to my writing room, where telling him how Coll: Smith had seem'd this morning in Council averse to comply with the King's order to break Dellius's two grants, that of Bayard, that of Evans, that of the King's farm, & that of the King's garden; he Mr. Graham advis'd me against it, telling me it could not be done, 'twas an originall right by vertue of the Great Seal of England and the publick faith of England: wch was surprizing to me, because he had not only often told me it was destructive to the Province that such great grants should be made of the lands, but also drew up a Representation of it to be sent to England. He told me the people were in a greater ferment than ever, and that the marchands had sent to Virginia to hire a ship to remove themselves and effects to England, and offered a £1000. for it; but that the Master or Owner stood upon £1200. He told me with tears in his eyes that he had been threatned, and that a woman had been with him this morning in his Chamber and told him there was no safety for him; that it was past mediation and reconciliation; that he had forfeited all friendship and forgivenesse of those y^t were formerly his friends, and warn'd him to have a care of himselfe.

On Friday the 5th of May 99. Mr. Graham was with me, and told me that yesterday he found a quarter of meat (he call'd it) laid crosse the threshold of the door of his lodging, and pretended to be allarm'd when he told it me. I ask'd him what he thought it might mean; he answ^d 'twas a menace to him that he was to be quater'd. I laugh'd at his fear. He told me he inquir'd strictly of the people of the house where he lodges, but none could tell how it came thither.

The above particulars were told me by Mr. Graham, wch I am able to testifie upon oath.

(Signed) Bellomont.

* * * * * * * * * * *

THE EARL OF BELLOMONT TO THE LORDS OF TRADE.

PAGE 820

[New-York Entries, D. 820.]

To the Rt. Honourable the Lords Com^rs for Trade & Plantations.

My Lords.

I did not think to trouble Your Lordships with another

Mr. Vesey[1] the English Minister at New Yorke has writ large encomiums of him to the Bishop. And my Lieutenant Governour writes to me that Vesey has left me out of his prayers, as Governour, and prays for Dellius by name, both in the Common Prayer and afterwards in the pulpit, desiring God to give him a prosperous voyage, to deliver him from the violence of his enemies and sent him safe back again to his flock. This is such an insolence as I must desire your Lordships will please to joine with me to have this man deprived, for it cannot be thought I will ever go to Church while that fellow continues Minister there. What is personall to myself I can forgive, but for him to pray publickly for Dellius and his return to his flock, when he stands deprived by Act of Assembly is such an arraignment of the justice of the Province, that there's an end of government, if such an insolence be suffered to passe unpunished. To shew your Lordships how strangely disingenuous this man's carriage has been to me, he sent me word by Mr. Graham the Attorney, that the angry party at New Yorke led him such a life for preaching up and exhorting to peace, charity and reconsiliation (tho' himself medled not with parties) that he should be forced to quit the town and Province; he afterwards came and told me the same thing, and that he look'd upon that wicked temper of theirs to be a sure argument of their guilt and of their being in the wrong. The same also he told my Lieutenant Governour, and likewise a story of Colonel Fletcher that for the vanity of it equalls his stiling himself Imperator in the inscription under his coat of Arms within the Fort. Vesey confessed he had obligations to Colonel Fletcher yet he could not but own he was an ill man, and he gave the following reason for it; that after I had superseded Colonel Fletcher, he went and read prayers at his house, praying for him as a private person, and leaving out the titles of Governour and Excellency. After prayers Colonel Fletcher call'd him aside and asked him how he came to leave off praying for him as he used to doe and whether he had forgot his respects for him. Mr. Vesey made answer that he being no longer Governour, he thought he could not truly nor justly give him the titles belonging to a Governour. Upon which Fletcher with great passion bade him be gone out of his house and never come near him more, for he would have no more to say to him or his prayers. This I had from the Lieutenant Governour at New Yorke, who is too much a man of hounour to forge such a story. Vesey's father lives near this town, is a most violent Jacobite and perhaps the boldest and most avowed one that has been known any where. The indictment (for he was try'd convict and sentenced to stand in the Pillory for uttering desperate words against his Majesty) is worth your Lordships reading, a copy whereof goes (No. 4) tho' it be not a constant rule that the same principles descend from father to son, yet it must be granted that where a son is bred up to the age of a man under an ill father, 'tis extraordinary if the son do not imbibe ill principles from the ill man his father, so that extraduce one would incline to believe that Parson Vesey disaffected to the Government, and his behavior at Yorke since my coming away confirms me that he is so. I desire your Lordships will please to prevaile with My Lord of London to send over a good moderate Divine of the Church of England to supply the cure at New Yorke in the room of Mr. Vesey; for I take the honour of the government to be concern'd in the displacing of that man. And I must further presume to tell your Lordships that if he be not turn'd out and Dellius kept out, so as that Act of Assembly that deprives the latter be maintained and approved at home, there will be no businesse for me at New Yorke, nor indeed for any honest Governour for the people there being so headstrong and tumultuous as they are already, how much more will they be so, if their party receive countenance and favour from the government in England.

If your Lordships mean I shall go on to break the rest of the Extravagant grants of land by Colonel Fletcher or other Governours, by Act of Assembly, I shall stand in need of a premptory order from the King so to do, which will animate the House of Representatives that sometimes have not courage to go through with a businesse of that kind, unlesse they see they shall be supported by the Government of England. The Lords Justices letter of the 10th of last November is with me a sufficient authority to proceed in that matter, but I know that orders renew'd from Court are more forcible with the people I have to deal with both in the Council and Assembly of New Yorke. If I may not proceed with the breaking of the remaining Extravagant grants then I shall become an humble petitioner that the Act I now send home for breaking Dellius's two grants &c may not receive the King's approbation, but be rejected; for I should reckon it a great injustice to break some grants and spare others no lesse extravagant than they; and I would by no means be an instrument in such injustice. Colonel Peter Schuyler, Mr. Ranslaer, Mr. Livingston, Colonel Beckman, Frederick Phillipps and his son Adolphus Phillips, Colonel Courtlandt and Colonel Smith, have vast tracts of land that are not lesse than twenty miles square, one with another, and I believe I say the least. Coll. Courtland has two of those great grants and Colonel Smith's runs fifty miles in length on Nassau Island, and there is an infinite number of goodly pines for pitch tar and rozen, as Monsr Bernon assures me who took a view of them; besides Colonell Smith has got the beach on the sea shore for fourty miles together, after an odd manner as I have been told by some of the inhabitants, having arbitrarily and by strong hand (being favour'd and supported by Colonel Fletcher and being Chief Justice of the Province, a place of great awe as well as authority) got or rather forced the town of Southampton to take a poore £10 for the greatest part of the said beach, which is not a valuable consideration in law, for Colonel Smith himself own'd to me that that beach was very profitable to him for whale fishing, and that one year he cleared £500. by whales taken there. I confess I can not have a good opinion of Colonel Smith; he knows what pressing orders I have from England to suppresse piracy, and if he were honest and did his duty, there would not a Pirate dare to shew his head in the East end of Nassau Island, he is so seated towards that end of the Island that he could disturb and seize them as he pleas'd, and yet that end of the Island is at present their rendevouz and sanctuary. Colonel Smith is under a double obligation to suppresse piracy being both Chief Justice of the Province and Judge of the Admiralty Court.

By one of the Acts of Assembly of New Yorke now sent there is a present of £1500 New York money made to me and £500 to my Lieutenant Governour. The House of Representatives would have presented me with £2000, but I refused so great a sum because I found upon inquiry none of the Governours before me had above £1500. and I thought it best to walk by precedent. The Act (as the King's in-

[1] Rev. Wm. Vesey graduated at Harvard College, Mass., and removed thence to Long Island, where he officiated as a Dissenting Minister. On the incorporation of Trinity Church, N. Y., in 1696, he was invited to conform. *New-York Documentary History*, 4to., III., 265. He accordingly proceeded to England, where he received holy orders, and officiated, for the first time, in his new church on 6th February, 1697. He revisited England about 1712, when he received the appointment of Commissary to the Bishop of London in New-York and the neighboring provine. He discharged the duties of that office, and of Rector of Trinity Church, until his death, which took place on the 11th of July, 1746, as we learn from Berian's *History of Trinity Church*.

letter this winter, after my long one of the 28th of November last; but Mr. Weaver being newly arriv'd after a passage of 13 weeks and bringing me your Lordships letter of the 19th of September it gives me a fresh occasion for writing.

I send your Lordships my reply to your observations on the Acts of Assembly of this Province (No. 1.) which I hope will give your Lordships satisfaction, and will induce you to report favourably of them to the King, especially the three following Acts mentioned in your Lordships said observations, vizt that for preventing vexatious suits &^c that for indemnifying all such persons &^c and lastly, that for Repealing an Act of Assembly &^c I can assure your Lordships the Revenue had never been obtained by me, had it not been upon the consideration of those three Acts, and the rejecting them would be a great mortification and discouragement to those people that gave the Revenue (against the humour & endeavours of an adverse party) to shew the loyalty and affection to the King. I also look on myself as unkindly used, if those Acts be not approved at home. Your Lordships seem'd to be of the same opinion with me in your letter of the 11th of last April, and to have made the same discrimination of men and parties here, and for proof of it I send your Lordships a Copy of two paragraphs in your said letter of the 11th of April (No. 2)

Your Lordships have favoured me with a Copy of Mr. Montague's memorial of the 13th of August last. Mr. Weaver assures me that Mr. Champantè had prepared an answer to the said memorial, & was to lay it before your Lordships when he came away; so that I will not give your Lordships the trouble of a particular answer to all the parts of the Memorial, but only to two or three points, on which Mr. Mountague builds his false deductions and wrong reasoning. In the first place he pretends to be commissioned by several hundreds of the gentlemen and other inhabitants of this Province to oppose some of the Acts of Assembly that we sent to England. I cannot but call in question the truth of such instrument, as he pretends was signed by severall hundred persons in this Province, and sent to him to oppose those Acts. If there had been such a body of the inhabitants averse to the passing of those Acts, 'tis a wonder they petitioned not the General Assembly against them, while they were passing, which is always done where a body of people look on themselves like to be hurt by a bill depending before the Assembly; but there was not the least struggle against the bills, but by tbree of the Council, who were either concern'd in the irregularities of the late governments or in the extravagant grants of land. I confess I have a jealousy if such an instrument was sent over to Mr Mountague with some hundred names to it, that it was forg'd, and those name writ by a Club consisting in a few persons. There are people in this town that are capable of such a slight.

Mr. Mountague takes upon him to call the present Assembly a pretended one, whereby he would insinuate that the Representatives were not fairly elected; but I will put my reputation upon it, & all the fortune I have in the world that there never was so fair elections of Representatives in this Province before, and I do not beleive there was the least foul play or illegality used in any of the elections. The only piece of management that I could hear was used in the elections, I remember I acquainted your Lordships of, which was, that after the writts were out, the Sheriffs of this & the adjacent Counties agreed among themselves that the elections in those Counties should be on one and the same day, which was a thing purely in the Sheriffs power to do, and cannot be reckon'd unfair.

Mr. Mountague would make the commitment of Mr. Burt and Wilson, a great offence, calling it arbitrary and illegal, and is so disingenuous as to charge it on me singly, as my act, tho' he knows very well it was done during the Session of the Assembly and that the Council and I did it in our Legislative capacity; wherein we had the concurrence of the House Representatives; and if I may beleive Coll, Smith and Mr. Graham, who are our chief Judge & Attorney Generall, the Governour and Council hvae druing the Session in such cases a judiciall power, like that of the House Lords in England, and can hear and determine civill causes (not appealable to the King) and imprison the parties offending. If the proceeding against Burt and Wilson was extra-judicial, why then have we not an able judge and Attorney Generall to set us right, and keep us to the strict rules of law. In this case we acted by the best advice we could have here, and it was done to discover a fraud put on the King in his revenue of Excise.

As to the Act for vacating some of Collonell Fletcher's extravagant grants of lands, I doubt not but that Mr. Champantè has before now answered Mr. Montague's tedious ill digested arguments and objections to that Act, and therefore I will breifly observe only two or three of them, which he seems to fancy invincible. He affects to be thought witty in reflecting on Collonel Heathcot's grant of part of the King's Garden, which says he is but 50 foot long, and yet is number'd among the extravagant lands. But by his favour a grant may be extravagant as well in it's nature and quality as in its extent and quantity. For instance, I fancy it would pass for an extravagant grant if the Crown granted away St. James's Park, no less than if New Forest or the Forest of Dean were granted away, and it was much more impudent & unjust in Collonel Fletcher to sell away that piece of the garden to Heathcot (which was robbing all succeeding Governours of their necessary convenience in a garden) than the granting Mr. Dellius near fourteen hundred thousand acres in one grant. I was offer'd a gardiner that would have repaired that garden and put it in good order and suplied my family with all garden stuffe gratis, if he might have had the overplus profits of the garden to himself and a lease from three years to three years, which was a great offer, but I could do nothing in it till the Vacating Act were approved by the King. The King's Farm too had been better applied to the use of the Governour (and more justly so because it was intended by the Crown for the Governour's demesne) than to the Church; for Collonel Fletcher might have found out another and more valuable glebe for the Church if he would have denied himself the sale of other lands and consequently the pocketing the mony he sold the lands for. As for the wrong which Mr. Mountague pretends would be done the Grantees (because of their charges for improvements) if the Act should be confirmed by the King, I will easily answer that argument. Upon the best information I can find, there is not a Christian inhabitant on either of Mr. Dellius's Grants, neither that whereof he was sole grantee, nor t'other wherein Coll. Schuyler and other were partners with him vizt the Mohack's land. The same thing I am informed of Collonel Bayard's Grants, who by the way has part of the Mohack's land in his grant, as I formerly acquainted your Lordships. Captain Evans's great grant of 40 miles one way and 30 another has but one house on it, or rather a hutt where a poor man lives and that hutt built by one Captain Mac Gregory[1] a Scotch man who was killed at the time of the Revolution here, and his widow said to be compelled by Collonel Fletcher to sell her house and land to Capt. Evans for 30 or 35£. to the ruin of herself and family.

[1]For some account of this gentleman, see III., 395.—Ed.

And to give your Lordships an account of the merit of Captain Evans; when I was at Rhode Island severall complaints were made to me of him, and some affidavits given me of his robbing ships and people on pretence of impressing seamen for the King's ship in that government where he had nothing to do. Collonel Nicholson when he was here lately, told me that Evans went with the King's ship to Virginia and there in the night stole a great number of hogsheads of Tobacco, and the custom thereof, and brought it away. Collonel Nicholson told me the number of hogsheads, but I have forgot. He was much exasperated against Evans and said he would complain of him home to England: it was truly a great misdemeanour to rob the King in his own ship. Mr. Livingston has on his great grant of 16 miles long and 24 broad, but 4 or 5 cottagers as I am told, men that live in vassallage under him and work for him and are too poor to be farmers having not wherewithall to buy Cattle to stock a farm. Collonel Courtland has also on his great grants 4 or 5 of those poor families; but in his case there is yet something worse than in any of the others. He had first one great grant of 20 miles square, which would not content him, but just upon my coming from England, he obtains another grant of Fletcher of 20 miles square also, and in the patent there is a priviledge annexed which in my opinion is cause enough alone for breaking his grant, that is, that after 20 years that mannor (for both grants were erected into a mannor) should choose and send a Representative to the Generall Assembly. There are two grants more in the Province that have that priveledge in the patents; which is very irregular and illegal in my apprehension. Old Frederick Phillips is said to have about 20 families of those poor people that work for him, on his grant. I do not hear that Frederick Phillips's son, Colonel Schuyler, Collonel Beechman or Collonel Smith, have any tenants on their grants; and I hear but of one that Mr. Nichols has on his great grant on Nassau Island and he is a Scotchman condemned in Scotland to be hanged with Jamison Clerk of the Council in Colonel Fletcher's time for blasphemy and burning the Bible. Jamison, young Graham and Honan Fletcher's Secretary at War and Private Secretary, have a grant of Fletcher of three hundred thousand acres of Land, against which there are many complaints, and so there are against most of the other grants I have named, many people being violently stripped of their lands by these grantees, supported by the favor of former Governours.

'Tis observable that most of the grantees were of the Counsel in Fletcher's time, which is a great aggravation of their breach of trust; for they were obliged by their oath to advise and act in all things for the King's best interest and advantage.

Then for Collonel Fletcher's instructions from the King which Mr. Mountague has been at the pains to transcribe in his memorial; he shews want of judgment in offering that clause in justification of the Grantees and their title. For no Governour before Fletcher had that unlimited power of disposing of the Crown Lands in this Province, and that instruction being unpresidented turns with greater force against Fletcher, making the fraud more apparent, because that clause was premeditated and contrived. 'Tis a very presumptious and unnatural act to make the King defraud himself, as by that clause in the instructions he is made to do. How commony a thing is it in England to break grants of lands made immediately by the King himself, when 'tis found that the King is deceived in his grants. Here the reason is yet stronger, that fraudulent grants made by a corrupt Governour should and ought to be made void.

I believe there are not less than seven millions of acres granted away in 13 grants, and all of them uninhabited, as I have before observed, except Mr. Ranslaer's grant which is 24 miles square, and on which the town of Albany stands; that grant being made when this Province was first settled by the Dutch the lands are fallen into many hands by the Dutch way of dividing them equally among their children; so that it would be a hardship to deprive the present occupants of their lands. But 'tis reasonable they should pay a Quit Rent to the Crown of half a crown p^r 100 acres and I beleive most of the people concerned in those lands would freely submit to such a quit rent if they could be well warranted and secured in their title for the time to come. The vacating Act sent home is fully justified by your Lordships representation to the Lords Justices of England & their Excellencies order to me, grounded upon your Lordships said representation and by the Act of Parliament in England which passed last Session to resume all the Irish forfeitures which had been granted away by his Majesty.

Mr. Sollictor Generall's report to your Lordships is very oddly drawn (to say no more of it) & shews he had a great deal of other business on his hands and left the report to his Clerk to draw up.

I am not angry with Mr. Mountague for his memorial nor the many errours and untruths in it; he has done it mercenarily and for a livelyhood. He is made use of as the organ to convey a parcel of untruths to your Lordships which were infused into him by the factious people of this place. I doubt not but Mr. Champantè will have made a substantiall answer to Mr. Montague's frothy memmoriall long before this letter will reach England.

If the Vacating Act I sent home had been approved by the King, I beleive the Generall Assembly would have broke all the rest of the extravagant grants in the province last Session. They were in the humour of doing it, but that the Acts being so delayed at home discouraged them.

The suspension put on that Act breaks all my measures; Your Lordships have been often told that till that Act be confirm'd in England, the King has neither land nor woods in the Province. How then can I comply with your last orders in your letter of the 19th of September, of trying to mar (make) tar with the Soldiers? Besides I proposed 12^d a day Sterling, as a reward for each soldier, which is 15½^d of this mony, and alters the case very much, and 40 acres of land for each soldier after 7 years service, which would cost the King nothing and yet be an advantage and security to the country and an incouragement to the soldiers; for if I cannot engage them to work heartily at first, my project will fail me. Therefore if your Lordships mean this design of making tar shall go on, let the Vacating Act be passed in England and new orders to me and the Assembly to break the rest of the exorbitant grants, with orders also to me to give the soldiers 12^d p^r day sterling apiece, and such a proportion of land to each officer and soldier as I formerly proposed, and then I will immediately begin to work. The soldiers must be paid every Saturday their reward, therefore 'tis not possible to pay them out of the produce of their work as your Lordship propose in your letter to the 19th of September, but if I may be allowed to draw for £500 home, for a beginning, I doubt not but I may be able to pay them on afterwards out of the produce.

I sent your Lordships, with my letter of the 28th Novr last, my articles and bond with two honest undertakers for Masts for the King's ships. For fear that packet should miscarry, I again send the said Articles (No. 3) and the

Bond for performance of the Articles (No. 4) my instructions to the Undertakers to secure the woods where the masts grow, for the King (No. 5.) and a list of prices paid to Mr. Taylor for masts and of such lower prices as Mr. Bridger offer'd to furnish masts for, as pr his paper, which I sent your Lordships with my letter of the 22d of last June, and lastly the price I have now agreed for with these Undertakers, which list is (No. 6.) I cannot but think that this bargain for masts is a very valuable peice of service, and that alone is a sufficient refutation of Mr. Mountague's tinsel arguments in his memorial. I believe I may venture to say I shall be able to furnish all the King's dominions with masts yards and boltsprits from these very woods, and that I shall save England a 100000£ a year; whereof the King's share of the mony sav'd will I fancy amount to a 5th of that sume or 20000£. a year. The Carpenters I sent to view those woods last year, assured me there were masts enough to serve the Kings navy a 1000 years. I tell your Lordships their own words.

Your Lordships letter of the 19th Septr is writ with that unusual coldness in relation to the Vacating Act I sent home, and not incouraging me to prosecute your former orders of breaking the rest of the grants that are exhorbitant, that I was just going to break of my bargain with the undertakers for masts and to write to them to leave of cutting the masts. But then I considered the consequence of such an order might in all probability do a world of hurt, not only in discouraging the Undertakers, but also in alarming our Indians and giving them some jealousy that might prejudice them against our building a Fort at Onondage. I perceive they are made to beleive I am in disgrace with the King and that I am to be superseded in this government. This they told as news to Collonel Romer when he was in that Country.

There is a messenger newly come from Albany who brings word the Undertakers for masts were very forward with their work, that they had drawn several masts out of the woods to the side of the Mohack's River, ready to float down when the river is open, for at present 'tis froze up. I am certain the Undertakers have agreed with the Mohacks that the King shall have their woods, because I directed them to make a sure bargain for the King, before they offer'd to begin to work, for fear of goving the Indians the least disgust. I have no letter from them, for the messenger says they were felling the masts and drawing them out of the woods when he came away. If the Undertakers knew that the Vacating Act is still unapproved by the King, I am confident they would immediately leave off working in those woods, for fear Mr. Dellius and the other grantees of the Mohack's lands and woods should sue them for a trespass and recover great damages against them. It were better that things of this kind were never called in question, I mean these fraudulent grants, than not to be vigorously prosecuted when once they are begun to be questioned. A slackness in the orders from home makes every thing uneasy here & discourages a man that has an honest zeal to serve England.

I have no doubt upon me as to the making tar with the soldiers, when your Lordships have done your part in getting the Vacating Act finally passed, and that you have complyed with the other three Articles, vizt 12d pr day sterling for each soldier, a credit for £500 to begin the work with, & and a liberty of rewarding the officers and soldiers with such proportion of land as I have formerly proposed, under such Quitrent as the Lords Justices of England order'd me in their letter of the 10th of November 98. As for the masts there is a demonstration of their being furnished, and as I writ in my letter of the 28th of November, so the same thing I now desire again, that your Lordships will order a Fly-boat or hag-boat of 500 tons to be here by the end of April or beginning of next May to carry away the masts. I desire your Lordships to consider too, that I run some hazard in raising a 1080£. New York mony on my own credit to pay for these masts, and shall be forced to draw bills on the Admiralty Board for that value; which bills I will inclose to your Lordships, that you may take such a course as shall be effectual to prevent a protest on my bills, which is a thing that has never yet happened to me, & the discredit of it would very much trouble me.

The have got about 40 saw mills up in this Province, which I hear rids more work or destroys more timber than all the saw mills in New Hampshire. 4 saws are the most in New Hampshire that work in one mill, and here is a Dutchman lately come over who is an extraordinary artist at those mills. Mr. Livingston told me this last summer he had made him a mill that went with 12 saws. A few such mills will quickly destroy all the woods in the Province at a reasonable distance from them.

The trade of ship timber from New Hampshire and the Massachusets, to Spain and Portugal, will go on more and more, till there be an Act of Parliament to forbid and make it penal. For, to use a person's expression that has lately writ to me from Boston about the mischief of that trade, those people laugh at your Lordship's order against it, and so they would at an order from the King. They know very well that nothing but an English Act of Parliament can hinder them, and such an act would easily be obtained to pass, I should think.

The Commissioners of Accounts appointed by act of Assembly would perswade me they shall make Coll. Fletcher debtor to the King severall thousand pounds more than the Account I sent your Lordships two years ago made him to be. They name some others too, who they pretend they shall make very considerable debtors to the King. They talk of such sums to me as will go a good way towards building Fortifications; and our Fortifications in this Province and to the Eastward of the Massachusets, if they be built as they ought to be will cost £40000 sterling, with all the honesty and thrift that can be used. In the calculation I made and sent your Lordships with my last letter of the charge of building forts, I omitted that of fortifying this harbour & defending this town from a bombardment, which I beleive will cost 7 or 8000£. I lately sent Coll. Romer to visit the harbour, and his report is (No. 7.) 'Tis great pity this town should be exposed to the mercy of an enemy; 'tis the growingest town in America. Since my coming hither there are not fewer than a 100 fair brick houses built, and a very noble Town-house.

If the ship were not forced to sail because of the great quantity of ice that comes down the rivers I would entertain your Lordships with a further discovery of Collonel Fletcher's corrupt methods of getting mony; insomuch as he is reckoned to have got £30000 new York mony in five years and half that he was in this government; and I know his friends here compute that he made that sum while he was here. And I can make out most of it upon a probable estimate. He left no trick or fraud unpractised to get mony, and all under the mask of pretended piety and a zeal for the Church of England even to martyrdom; if people would have beleived him; but he was quickly found out, and the officers who first experienced his hypocrisy nick-named him the Pharisee. He was given to drinking, to corruption, and lying; but lying was his predominant vice, and some of his friends have owned so to me, in

Edward Hyde, by courtesy called Lord Cornbury, was the grandson of Edward Hyde, Earl of Clarendon, Lord Chancellor, and Prime Minister of Charles II., and the son of the second Earl of Clarendon, who was brother of James the Second's Queen. The father of the subject of this sketch remained faithful to the cause of his brother-in-law the banished king, and on the revolution, by which William and Mary were seated on the throne, declined to take the oath of allegiance to the new power. But his son was of a more facile disposition, and more apt to reconcile himself to the change of dynasty where his fortunes were so greatly interested, and being an officer commanding a body of cavalry set the example of defection by leading his troops to the standard of William, an event which was considered of such importance as to entitle him to recompense.

Lord Cornbury was commissioned as Governor of New York, as successor to the Earl of Bellomont, who died in the city of New York in 1701. His qualifications for an executive position of such consequence were of an inferior order, in an intellectual point of view, while his pecuniary circumstances are described as being in a straitened condition. He was, however, first cousin to the heiress to the throne (Queen Anne) and his qualifications in other respects received a gloss which covered many defects.

Lord Cornbury arrived in New York in May, 1702, accompanied by his family and a numerous suit of followers. Katherine Lady Cornbury was daughter of Lord O'Brien, son of the Earl of Richmond, of Ireland, and of Lady Katherine Stuart, sister of the Duke of Richmond and Lenox. She was married to Lord Cornbury on the 10th of July, 1688, and on the death of her mother, Lady O'Brien, became Baroness Clifton of Leighton Bromswold, Warwickshire, England. Such weight as attended upon aristocratic connections were, therefore, not wanting to secure dignity and success to Lord Cornbury's administration.

The official term of his office lasted six years, and is generally admitted to have been characterized by an inconsiderate zeal for the suppression of religious liberty, and by a high tory principle little calculated to find sympathy in the body of the community. He found the country in a state of tumult and distraction, and his conduct added fuel to the flame. Avarice was his ruling passion. Resolved to aggrandize himself and accumulate riches, he directed all the machinery of his official position to that end.

The portrait accompanying this article represents the governor in women's clothes, a circumstance which probably arose from the facts of history, as we find it alluded to in various historical works, and in a public communication made by the Hon. Lewis Morris to the Secretary of State, at London, we find the following reference to his lordship. Recommending a certain gentleman for governor, he says: "He is an honest man, and the reverse of my Lord Cornbury, of whom I must say something which, perhaps, nobody will think worth their while to tell, and that is his dressing publicly in women's clothes, every day, and putting a stop to all public business while he is pleasing himself with that peculiar but detestable magot."

Lord Cornbury had the misfortune to lose his wife in this city. She died, after a lingering sickness, at half-past eleven o'clock on the night of Sunday, August 11, 1706, in the thirty-fourth year of her age, and was interred on the 13th of the same month in Trinity Church, New York. By her marriage with Lord Cornbury she had seven children, of whom only one son and two daughters survived their mother.

Lord Cornbury was superseded as Governor of New York by Lord Lovelace, whose commission was dated in April, 1708. Soon after that period, by the death of the second Earl of Clarendon, the subject of this sketch succeeded to that title. Before his departure from New York severe proceedings were taken by creditors for the enforcement of their claims, from which they had been restrained during his official period. So that, in all respects, the residence in this city of this high-born personage was characterized by indignities which testified to the light respect in which he was held.

softer terms. They have told me that Collonel Fletcher was a man of parts, & 'twas a pity he gave himself too great liberty in discourse, and that he had not a guard on his tongue. In a word besides the many frauds he has put on the King he has left behind him such seeds of disaffection sedition and immorality in the people here, as will require much time and pains to root out and entinguish. And I hope your Lordships will support me in the execution of your own orders, that you will in the first place make him refund all the mony he has cheated the King of, which the Commissioners of Accounts will (as they assure me) shortly prove undeniably upon him. Your Lordships know that several merchants in this town are his securities in a Bond of 10000.£. In the next place I hope your Lordships will still maintain your resolution of breaking all his grants of the lands, otherwise your acquiescence with his corrupt bargains will be look'd upon as a sanction given them, which I can never in the least imagine your Lordships capable of. If there were no other reason for breaking his grants and some few grants of other Governors than the making of tar, sending home ship timber and masts, surely every man that has a grain of sense and honesty must own that so important a service as the furnishing the King and his dominions with those things, outweighs all reasons and considerations whatsoever that can be offer'd in behalf of Fletcher and his grantees.

I remember I formerly returned Mr. Dellius's grant whereof he is sole grantee at about 900000 acres, and that upon Mr. Graham's report of its being 86 miles long and but 16 miles broad, who made that report by guess, for he own'd he never had seen that land. But some of the Dutch that have travelled that way have since assured me they judge it to be 25 miles broad, taking one part with another; and if so it contains 1376000 acres; which is a prodigious tract of country to grant away to a stranger that has not a child, that's not denizen'd, and in a word a man that has not any sort of vertue or merit.

I do not hear one word of our Indians since my last letter to your Lordships.

I hope the Lords of the Treasury will enable the Judge and Attorney Generall to come away speedily or we shall be all in confusion here. Justice is so strangely administered in our Courts here, that there are great complaints and dissatisfaction about it.

I rely on your Lordships favour for procuring me a reasonable salary, and some consideration for the time past. Surely I may pretend to deserve a mark of the King's favour for the cheap bargain I have made for masts. I am with respect

My Lords

Your Lordships most humble
and obedient servant
Bellomont

New Yorke
Jany 2d 170⅔

* * * * * * * * * *

This picture, unmistakably, affords mountains of proof, that the King's Farm was to be reserved for the enjoyment of the governors; that if it was to be leased, it was simply for their benefit; that it was a matter over which there had been placed stringent rules, note the clause in the breaking and annulling act that no governor should grant either the King's Farm or Garden, for longer than his term of office.

The preceding pages should convince my readers that someone was out to get something at all hazards that someone else was determined they should not get, and that, even in those primitive times, there was the same old striving, the same old craving for power and money, which stops at nothing to achieve its goal, and that the same old prosecution and persecution prevailed, in fact, being compelled to use some such methods to attain that goal, it became a hard and fast habit impossible to break.

At any rate the whole episode wanted nothing by way of exposure at the hands of Bellomont, which calls to mind another one of those stories, with which the legal fraternity is usually full to the brim, pressed down and running over, therefore they must be inflicted on someone.

A member of the Legislature of whom some whopping graft stories had been circulated, and who, perhaps, was standing much in awe of exposure, was about to build a new home, whether out of his ill-gotten gains or not, is not recorded. At any rate, looking over the plans, the architect remarked, "You will want southern exposure, I suppose?" "No, sir!" said the man. "If you can't build this house without any exposure, I'll get another architect."

Bellomont's death was the source of new troubles. Nafan, the lieutenant governor, took upon himself the supreme command.

During the short administration of Nafan, the greatest confusion existed in every department of the government, in consequence of the existing animosity between the Leisler and the Anti-Leisler factions. Justice was out of the question, and every matter in controversy was decided according to the will of the party which happened just then to have the ascendency.

The Governor who next succeeded was Lord Cornbury, son of the Earl of Clarendon. He came to the province of New York in very indigent circumstances. Hunted out of England by his hungry creditors, he was bent upon squeezing as much money out of the people of the province as he could. He was by no means brilliant, but in his zeal for the church of England, he certainly was not surpassed by any of the former English Governors.

Of all the governors of the colony, under the English crown, Lord Cornbury received the unenviable distinction of being the worst. Rapacious without a parallel, he never hesitated to apply the public money to his own private purposes. He sought to establish the episcopacy at all costs and hazards, even going to the extent of prohibiting ministers of other denominations from exercising their functions without his special license. He was as destitute of gratitude as he was of courtesy, injuring those the most from whom he received the greatest benefits.

So urgent were the complaints against Cornbury, both from the province of New York, and the province of New Jersey, that he was divested of his power in December, 1708. No sooner was he relieved of his office of governor, than his creditors put him in prison, where he remained until the death of his father, which elevated him to the peerage, and procured his liberation.

He certainly had the understanding heart, so far as his patronage to the English church was concerned, for scarcely had he arrived in the province, when, according to the record put in this case by Trinity Church, he was taking care of their pet devotion, the King's Farm, which, because of the breaking and annulling act, and Bellomont's determination, had been lost to them for a while. See page 648:*

8. The defendants then read in evidence an original lease dated May 9th, in the fourteenth year of the reign of William the Third, granted in his name by Lord Cornbury, governor, under the great seal of the province of the corporation of Trinity Church, by its then name of incorporation, describing it as "our farm, called and known as the King's Farm," without any specific boundaries or location; to continue from May 1st, 1700, during the time Lord Cornbury

should continue governor of the province, at the annual rent of sixty bushels of wheat. This lease was objected to, because it was not signed by Lord Cornbury, and was not in accordance with the act of 1699. It was stated as matter of history, that Lord Cornbury was superseded as governor, in 1708.

History tells us that Lord Cornbury was inducted into the office of the Governor of the province of New York, on the 3rd day of May, 1702, and exactly six days later, according to the record in this case, pages 648 and 729[8], he was giving a lease of the King's Farm, without any metes and bounds description, to Trinity Church, which, comformably to the act of 1699 was to continue from May 1st, 1700, for so long as he should remain governor. See page 729:[8]

On the 9th of May, 1702, Lord Cornbury, then governor of the province, executed another lease of the King's Farm to Trinity Church, comformably to the act of 1699, to continue from May 1st, 1700, so long as he should remain governor, describing it simply as the King's Farm, without any specific boundaries or location.

It was objected to this document that it was not signed by Lord Cornbury, and that King William, in whose name it runs, was dead prior to its execution. As to the [730] first objection, the lease is attested by the great seal of the province. The want of the governor's signature will be discussed in another place. As to the other, it was a maxim of the common law that the king never dies; and it was that part of the king which literally never dies, the sovereign authority exercised by the viceroy or governor, whose functions continued, although the person clothed with the office of king had died, and another had succeeded, which granted the lease under consideration. If it were ever questionable, the crown never did question it, and it could not be collaterally impeached. A further and conclusive answer to both objections is, that the testimony is offered not to prove title, but to establish the existence of a claim of title and a possession accordingly; so that, whether voidable or even void, the lease is equally competent to show the public affirmation by the executive of the province of the king's possession, and his exclusive right to the farm.

This is celerity. And the case tells us that some six months later, November 27th, 1702, he was putting the stamp of approval upon an act intended to repeal the vacating, annulling and breaking act of 1699. It is by this repealing act of November 27th, 1702, that the Vice-Chancellor justifies the giving of the Queen Anne grant in 1705, for he tells us at page 738:[8]

"If the argument held good it would be suicidal to the complainants, because the queen never approved the annulling of act of 1699 till June 26th, 1708, and thus the latter act was not in force when the letters patent were granted. But this was not the effect of the colonial legislation. Such statutes were valid and in force until they were disapproved by the sovereign. The governor's approval was sufficient in the first instance."

Not agreeing with the Vice-Chancellor, let us see what are the facts. Look at the provision of the original Duke's Charter of Liberties, passed in 1683, which has the approval of the Governor, and though not in force at this time, because the King vetoed the act March 3rd, 1684, indicates clearly a reservation on the part of the Crown to approve or disapprove of all action taken by the Colonial Assemblies. Here are the material excerpts from the Charter of Liberties of that date:

FIRST GENERAL ASSEMBLY, HELD AT FORT JAMES IN THE CITY OF NEW YORK.

First Session Beginning October 17, 1683.

* * * * * * * * * *

THE CHARTER of Libertyes and priviledges granted by his Royall Highnesse to the Inhabitants of New Yorke and its Dependencyes.

[Passed, October 30, 1683.]

ffOR The better Establishing the Government of this province of New Yorke and that Justice and Right may be Equally done to all persons within the same

BEE It Enacted by the Governour Councell and Representatives now in Generall Assembly mett and assembled and by the authority of the same.

* * * * * * * * * *

THAT Noe man of what Estate or Condicon soever shall be putt out of his Lands or Tenements, nor taken, nor imprisoned, nor disherited, nor banished nor any ways distroyed without being brought to Answere by due Course of Law.

* * * * * * * * * *

THAT All Lands and Heritages within this province and Dependencyes shall be free from all fines and Lycences upon Alienacons, and from all Herriotts Ward Shipps Liveryes primer Seizins yeare day and Wast Escheats and forfeitures upon the death of parents and Ancestors naturall unatturall casuall or Judiciall, and that forever; Cases of High treason only Excepted.

* * * * * * * * * *

That all bills agreed upon by the said representatives or the major part of them shall be presented unto the governor and his council for their approbation and consent, all and every which said bills so approved of consented to by the governor and his council shall be esteemed and accounted the laws of the province, which said laws shall continue and remain of force UNTIL THEY SHALL BE REPEALED BY THE AUTHORITY AFORESAID that is to say the Governor, Council and Representatives in General Assembly by and with the approbation of his Royal Highness, or expire by their own limitation.

Then note the second attempt, in the year 1691, to acquire the selfsame privilege, by which legislation could be enacted with the approval of the governor, and become the law of the colony. This law met the fate same as the former, and was repealed by the King May 11th, 1697, four days after the granting of the charter to Trinity Church.

Following is the Act of May 13th, 1691:

[CHAPTER 10.]

[Chapter 10, of Livingston & Smith and Van Schaack, where the title only is printed. Printed in full in Fowler's Bradford, p. 18; Baskett, p. 3. Livingston & Smith, Van Schaick and Baskett state that this act was repealed by the King, May 11, 1697. See Report of Lords of Trade in Doc. Rel. to Col. Hist., IV, p. 368. For valuable note in reference to this act, see Fowler's Bradford, p. CXI.]

An Act declareing what are the Rights and Priviledges of their Majesties Subjects inhabiting within their Province of New York.

[Passed, May 13, 1691.]

Forasmuch as the Representatives of this their Majesties Province of New York now Convened in Generall Assembly are deeply sensible of their Matys most gratious favour in restoring to them the undoubted Rights and Priviledges of Englishemen by declareing their Royall will and pleasure in their Letters Pattents to his Excellcy who they have appointed their Captaine generall and Governour in Chief over this their Province; that he should with the advice and consent of their Councill from time to time as need shall require to summon and call generall Assemblys of the Inhabitants being freeholders according to the usage of their Majesties other Plantations in America. And that this most excellent constitution soe necessary and soe much Esteemed by our Ancestors may ever continue unto their Majesties Subjects within this Province of New York; the Representatives of this their Majesties Province Convened in Generall Assembly doe with all duty and Submission humbly pray that the rights, Priviledges Libertyes and francheses according to the Lawes and statutes of their Majesties Realm of England may be confirmed unto their

Majesties most dutyfull and royall Subjects Inhabiting within this their Province of New York by Authority of this generall assembly. Be it Therefore Enacted by the Governour and Councill and the Representatives mett in generall Assembly. And it is hereby enacted and declared by the Authority of the same, That the supreame Legislative power and authorite under their Majesties William and Mary King and Queene of England &c shall forever be and reside in A Governour in Chief and Councill appointed by their Majesties their Heires and successours; And the people by their Representatives mett and Convened in generall Assembly; that the exercice and administration of the government over the said Province shall, persuant to their Majesties Letters Pattents be in the said Governour in Chief and Councill which whose advice and Consent or with att least five of them, he is to rule and Govern the same, according to the Lawes thereof, and and not otherwise. That in Case the Governour in Chief shall Dye or be Absent out of the Province; and that there be noe person within the said Province; Commissionated by their Majesties their heires or Successors to be governour or Commander in Chief that then the Councill for the time being or soe many of them as are in the said Province doe take upon them the administration of the government and the Execution of the Lawes thereof and powers and authorities belonging to the Governour in Chief and Councill, the first in nomination in which Council is to preside untill the said Governour shall return and arrive in the said Province againe, or the pleasure of their Majestyes their heires or Successors be further known. That for the good government and rule of their Majestys Subjects a session of a generall Assembly be held in this Province once in every yeare. That every freeholder within this province and freeman in any Corporation shall have his free Choice and voat in the electing, of the Representatives without any manner of Constraint or Imposition; And that in all elections the Majority of votes shall carry itt, and by freeholders is to be understood every one who shall have fourty shillings P Annum in freehold. That the persons to be elected to Sitt as Representatives in the Generall Assembly from time to time for the severall Cittys, Towns, Countys, Shires, Divitions or Mannors of this province and all places within the same shall be according to the proportion and number hereafter expressed, that is to say for the Citty and County of New Yorke foure for Suffolk County two for Queens County Two for Kings County two, for the County of Richmond two, for the County of West-Chester two, for the County of Ulster two, for the Citty and County of Albany two, for the Colloney of Renslaerswick, one, Dukes County two; and as many more as their Majesties their heires and successors shall think fitt to establish. That all persons Chosen and Assembled in manner aforesaid or the Major part of them shall be deemed and accounted the representatives of this Province in generall assembly. that the Representatives convened in generall Assembly may appoint their own times of meeting during their sessions and may adjourn their house from time to time as to them shall seem meet and convenient. That the said representatives as aforesaid Conven'd are the sole Judges of the Qualifications of their own Members, and likewise of all undue Ellections, and may from time to time purg the house As they shall see occation That noe member of the generall assembly or their Servants dureing the Time of their Sessions and whilst they shall be going to and returning from the said Assembly shall be arrested, sued, Imprisoned or any wayes molested or troubled or be Compelled to make answer to any suite, bill, plaint Declaration or otherwise, Cases of high Treason, and fellony onely Excepted. That all Bills agreed upon by the Representatives or the Major part of them shall be presented unto the Governour and the Councill for their approbation and Consent all and every which said Bills soe approved of any consented to by the Governour and the Councill shall be Esteemed and accounted the Laws of this Province which said Lawes shall continue and remaine in force untill they be dissallowed by their Majesties their heirs and Successors or expire by their own limitation. That in All Cases of death or Absence of any of the said Representatives the-Governour for the time being, shall Issue out A writt of Summons to the Respective Cittys Towns Countys Division or Mannors; for which he or they so deceased or absent were Chosen, willing and requireing the freeholders of the same, to Elect others in their places and stead That noe freeman shall be taken and Imprisoned, or be desiezed of his freehold, or liberty or free Custom's, or out Law'd or Exiled or any other wayes destroyed, nor shall be passed upon, adjudged or Condemned but by the Lawfull Judgement of his peers and by the Law of this Province, Justice nor right shall be neither sold denied or delayed to any person within this Province. That noe Aid, tax, tollage, assessment, Custome Loan, Benevolence gift, Excise duty or Imposition whatsoever shall be laid assessed Imposed, Levyed or required of or on any of their Majtys Subjects within this Province &c or their estates upon any manor of Colour or pretence whatsoever but by the Act and Consent of the governor and Councill and Representatives of the people in generall Assembly mett and Convened; That noe man of what estate or Condition soever shall be put out of his Lands, tenements, nor taken nor Imprisoned nor disinherited nor banished nor any wayes destroyed or molested without first being brought to Answer by due Course of Law. That A freeman shall not be Amerced for A small fault but after the maner of his fault, And for A great fault after the greatness thereof, saveing to him his freehold and A hubsandman saveing to him his wainage; and A merchant saveing to him his Merchandize; and none of the said Amercements shall be Assessed but by the Oath of twelve honest and Lawfull men of the Vicinage provided the faults and Misdemeaners be not in Contempt of Courts of Judicature. All tryalls shall be by the verdict of Twelve men and as nere as may be Peares or equalls of the neighbourhood of the place where the fact shall arise or grow; whether the same be by Indictment declaracon or Information or otherwise against the person or defendant. That in all cases capitall or criminall there shall be a grand Inquest who shall first present the offence; and then twelve good men of the neighbourhood, to try the offendor, who after his plea to the Indictment shall be allowed his reasonable challenges. That in all Cases whatsoever bayle by sufficient suretyes shall be allowed and taken unless for Treason or fellony plainely and specially expressed and mentioned in the Warrant of Committment; and that the ffellony be such as is restrained from Bayle by the Law of England. That noe freeman shall be Compelled to receive any souldiers or Marrinors; Except Inholders and other houses of Publique entertainment; who are to Quarter for Ready money into his house and their Suffer them Sojorne against their Wills, Provided it be not in time of actuall warr within this Province. That noe Commission for proceeding by Martiall Law against any of his Majesties Subjects within this Province &c shall Issue forth to any person or persons whatsoever least by Colour of them any of his Majesties Subjects be destroyed or put to death. Except all such officers and souldiers that are in Garrison and pay dureing

the time of actuall Warr. That all the Lands within this Province shall be esteemed and accounted Land of ffreehold and Inheritance in free and Common soccage according to the tenure of East Greenwich in their Matys Realm of England. That noe Estate of A feme Covert shall be sold or Conveyed but by deed acknowledged by her in Some Court of Record the woman being secretly examined if She doth itt freely without threats or Compulsion of her husband. That All wills in writeing, attested by three or more Credible Witnesses shall be of the same force to Convey Lands as other Conveyances being proved and Regestred in the proper offices in each County within dayes after the Testators death That all Lands and heritages within this Province and dependencies shall be free from all fines, licences upon Alienations; and from all hariotts, ward shipps, leveries primer, Seizins yeare and day waist Escheat and forfeitures upon the death of parent and Ancestors, naturall, unnaturall Cassuall or Judiciall and that for ever. Cases of high treason onely excepted. That noe person of what degree or Condition soever throughout this Province Choosen appointed Commisionated to Officiate or Excute any office or place Civill or Military within this Province &c shall be capable in the Law to take upon him the Charge of such places before he hath first taken the oaths appointed by act of Parliament to be taken in Lieu of the Oaths of Supremacie and allegiance and Subscribes the test. That noe pson or psons which profess faith in God by Jesus Christ his onely sonn shall at any time be any wayes molested punished disturbed disquited or called in question for any difference in opinion, or matter of Conscience in Religeous Concernment who doe not under that pretence disturb the Civill peace of the Province and that all and every such Person or persons may from time to time and at all times hereafter freely and fully Enjoy his or their opinion persuasions Judgements in matters of conscience and Religion throughout all this Province and freely meet at Convenient places within this Province, and there worshipp according to their respective perswasions without being hindred or molested, they behaveing themselves peaceably Quietly, modestly and religiously, and not useing this Liberty to Licentiousness nor to the Civill Injury or outward disturbance of others. Allwayes provided that noething herein mentioned or Contained shall extend to give Liberty for any persons of the Romish Religion to exercise their manor of worshipp Contrary to the Laws and Statutes of their Majesties Kingdom of England.

* * * * * * * * * *

It must be evident from the position taken by the Crown, in declaring these acts a nulity, that he did not intend to delegate this power to the Governor, Council and Assembly of the Province, but reserved unto himself the final vetoing power of all Colonial Laws.*

However, for the sake of argument, let us follow the declaration of the Vice-Chancellor, in holding that the acts of the legislature become a law upon the Governor's approval; then what becomes of the question viz: "laws shall be and remain in force and effect until they be disallowed by their Majesties." What is the English meaning of these words? If they mean anything they mean that the Governor and the Council had lost jurisdiction of the Act, and before the Act became the final law of the Province, it must have the approval of the Crown; that any attempt on the part of the Assembly and the Governor to repeal the Act, if effectual for such purpose, would be to take away all voice on the part of the Crown whatsoever. The absurdity of this position, is to be the more realized by assuming the possibilities that might have occurred.

Suppose the Council and Assembly had passed a law granting the entire possessions of the Crown in America to King Cachew, the Governor approved, and, pursuant to such act gave a grant, robbing the Crown of its entire American possessions; then to put the final seal upon the transaction, the Assembly and Council, repeal the act, and the Governor approves. The Sovereignty of the Crown's entire possessions had been transferred to another Monarch, and all is legal and well. The Act is repealed, but the grant remains, according to the theory of the Vice-Chancellor.*

Does not any such construction rob and destroy all meaning and effect to the words "Shall be and remain in force and effect until they be disallowed by their Majesties."

If such was the law, then was not the repealing act a nullity, so far as it attempted to destroy the act of 1699, and were not all acts of the Governor and Council, based upon the theory that the Act of 1699 was no longer a bar, beyond their authority?*

The historical fact, no doubt, was, that the crown was opposed to giving assent to any general laws, for we find in the crown's commissions to each governor, as they were successively appointed, substantially the same provision, viz: "That all laws assented to by the governor shall be good and binding until such time as I shall cause my dislike of and refusal to pass to be signified unto you, and from thenceforth the same shall cease and be null and void.

The following excerpt from the crown's instructions to Governor Dongan establishes that as early as 1682, this practice, by which the crown reserved the right to act upon every separate piece of legislation, (which I presume if I may be permitted to indulge in presumption, as the Vice-Chancellor, so long as I do not let my presumptions substitute a scrap of paper for a deed), was apparently to prevent some hidden scheme being authorized by general legislation.

INSTRUCTIONS TO GOVERNOR DONGAN

* * * * * * * * * *

You are also with advice of my council with all convenient speed after your arrival there, in my name, to issue out writs or warrants or summons to the several sheriffs or other proper officers in every part of your said government wherein you shall express that I have thought fit that there shall be a general assembly of all freeholders by the persons whom they shall choose to represent them, in order to consulting with yourself and the said council, what laws are fit and necessary to be made and established for the good weale and government of the said colony and its dependencies, and of all the inhabitants thereof, and you shall issue out the said writ or summons thirty days before the time appointed for the meeting of the said Assembly, which time and also the place of their meeting (which I intend shall be in New York) shall also be mentioned or expressed in the said writ or summons, and you, with the advice of my said council are to take care to issue out so many writs or summons and to such officers, in every part, not exceeding eighteen, so the planters or inhabitants in every part of the said government may have convenient notice thereof and attend at such election, if they shall think fit. And when the said Assembly so elected shall be met at the time and place directed, you shall let them know that for the future it is my resolution that the said general Assembly shall have free liberty to consult and debate among themselves all matters as shall be apprehended proper to be established for laws for the good government of the said Colony of

New York and its dependencies, and that if such laws shall be propounded as shall appear to me to be for the manifest good of the country in general and not prejudicial to me, I will assent unto and confirm them. In the passing and enacting of all such laws as shall be agreed unto by the said Assembly I will have called by the name of the General Assembly of my Colony of New York and its Dependencies wherein the same shall be (and I do hereby ordain they shall be) presented to you for your assent thereunto.

You are to consider whether the same be for the general good and not prejudicial to me; and if you find them so to be then you are to give your assent thereunto. But if you shall judge them inconvenient and prejudicial, you are to refuse your assent thereunto, and in all cases you are to have a negative voice to refuse all laws that are presented to you, and when you shall have given your consent to such laws as shall be so agreed, you shall by the first opportunity transmit the same to me, and under the hands of yourself and council, and under the seal of the Colony, (which you are to use in passing of grants) to the end that I may ratify and confirm the same, if I shall approve or reject them if I do not think them reasonable. But the said laws so assented unto by you shall be good and binding until such time as I shall cause my dislike of and refusal to passe to be signified unto you, and from thenceforth the same shall cease and be null and void to all intents.

* * * * * * * * * *

And you are not to pass any law or do any act by grant, settlement or otherwise whereby my revenue may be remitted, lessened or impaired, without my especial leave or commands therein.

(These instructions are dated at St. James, January 27, 1682/3.)

* * * * * * * * * *

Trinity was incorporated May 6th, 1697. Four days later the above-mentioned Act of 1691 was disapproved by the Crown. The Fletcher lease to Trinity Church was dated August 19th, 1697. The law vacating and annulling this lease is dated May 12th, 1699. Was this notice to Trinity Church that the Crown intended to reserve the King's Farm for the enjoyment of her Majesties' Governors? Does not that Act specifically notify them in unmistakable terms that no Governor shall lease this King's Farm for longer than his own term of office?

With the annulling act passed, pursuant to the orders from the Crown, because of the furore these extravagant grants had caused in the Province, the objections of the Crown to the mere leasing of King's Farm and Garden, for seven years, will you believe that the power reserved by the crown could be taken away, usurped, by any subsequent action on the part of the Assembly or Governor of the Province? If such was good law in the Province, the Governor and the Assembly, by enacting and repealing, rendered useless and could even frustrate the will of the Crown.

Here is the famous repealing act:*

[CHAPTER 126.]

[Chapter 126, of Livingston & Smith and Van Schaack, where the title only is printed. Printed in full in Brinley's Bradford, pp. 196, 229. Title only is printed in Baskett, p. 62. Livingston & Smith and Van Schaack, and Baskett, all state that this act was repealed by the Queen, June 26, 1708.]

An Act for the Repealing Several Acts of Assembly, and Declaring other Ordinances, publisht as Acts of Assembly, to be void.

[Passed, November 27, 1702.]

FOR as much as Several Acts and Laws have lately been past in this Colony, with plausible and Colourable Titles and pretences, some of them Incongruous, and unjust in themselves, others to abtain private and Sinister ends, under the Cloak of publick good; many pretended Acts, as Laws, by persons unquallified by Right or Law to sit or Act in the Legislative power, and by Several as were not the Choice of the People, and all of them instead of being for the profit and advantage of the Subject, as they ought to be, have been, and prov'd to the Distruccon of property, the confining and Enervating of Liberty, Ruinous to Trade, to the Impoverishing of the People, a Discouragement to Industry, and hurtfull to the Settlement and prosperity of the Colony.

Be it therefore Enacted by his Excel the Govenr by and with the advice and Consent of her Ma'tys Council and Assembly, and by the Authority of the Same, That one Act of General Assembly, Entituled an Act for Regulateing Elections of Representatives in Generall Assembly in each Respective City and County within this Province. One other Act, Entituled, an Act to prevent Vexatious Suits and Settling and quieting the Minds of his Ma'ties peaceable Subjects within this Province. Also, one other Act, Entituled, an Act for Vacating, Breaking and Annulling several Extravagant Grants, made by Col Fletcher, late Gover of this Province under his Ma'ty, and all and every the Branches, Clauses and Articles in all and any of them Contained, shall from and after the publicacon hereof, be Abrogated, Repealed, Annulled, and from thenceforth be utterly Void and of none Effect.

And be further Declared and Enacted by the Authority aforesaid, That all and every pretended Act and Acts of General Assembly, and every Sentence, Judgment, Decree, Order, Ordinance and Edict, Entituled made pronounced, publish'd or Promulgated as an Act or Acts of General Assembly, or Law or Laws of this Colony, since the first day of August, in the Year of our Lord One thousand Seaven hundred and one, are, and hereby are Declared and Enacted to be utterly and wholly frustrate, null and void to all Intents, Constructions & purposes whatsoever, any Law, Statute or Custom to the Contrary hereof in any wise notwithstanding. And that the Memory of those pretended Act and Acts of General Assembly may be wholly Obliterated, Deleted and buried in perpetual Oblivion,

Be it further Enacted by the Authority aforesaid, That all Minutes, Notes, Memorials, Registry, Enrolments, Filing, and Entries of all or any of the said pretended Act or Acts, shall be defaced, taken off the File, Torn, Cancelled, or otherwise Totally Destroy'd, as if the Same had never been had, made, Declared Set forth, Publish'd or Promulgated.

Provided always, That this Act, or any thing therein Conteined, shall not Extend to Charge or burthen the Collector and Receiver Generall of this Colony, or the Commission'rs for Executing the Office of Collector and Receiver General for the time being, or any other person or persons whasoever, for Collecting or Receiving any publick moneys by Colour or pretext of any of the said pretended Acts of Assembly, but that the said Collector and Receiver General, and the said Commission'rs for Executing the Office of Collector and Receiver General, and other Person or Persons, as aforesaid, are hereby thereof & therefrom wholly Exonerated and Discharged, and therefore hereby Indempnified, any thing herein to the Contrary hereof notwithstanding.

* * * * * * * * * *

Though this repealing act, with the Governor's approval thereto, was before the Crown for affirmance or disallowance, as was also the vacating and annulling Act of 1699, we find Lord Cornbury, merely, of course, suffering from the dreaded infection of it always "Being better to give

than receive", especially when giving that which costs you nothing, granting the King's Farm, in fee simple, to Trinity Church, and you are to believe that he did this, in the face of all the furore which had been going on in the Province, and the Assembly, against even leasing the said Farm to the church. It is to be borne in mind that none the least of the objection to giving this Farm to the church, was that the inhabitants were taxed for the maintenance of the minister and the church.

Aside from the question as to whether the annulling act was in force or not, whether Governor Cornbury exceeded his authority or not, we are faced with the question as to what effect the Crown's final approval of the annulling Act of 1699, and disapproval of the repealing Act of 1702, had upon the alleged grant. The annulling Act specifically states that the grants mentioned were to be ipso facto void, and obliterated from the records of the Secretary's Office of the Colony.

Strange as it may seem, in the face of the opinion in this case, as late as July 1707 the Crown, apparently, had absolutely no knowledge that Lord Cornbury had given this grant in fee, for we find the Queen's representatives reporting upon this subject, from which it is seen, that Cornbury, whom they claim signed the grant in fee, two years before, was representing to the Crown that these grants, mentioned in the vacating and annulling act were exorbitant, were prejudicial to the province, and should be annulled.

This communication is reproduced in full, as it indicates very clearly that the Crown was opposed to the granting of King's Farm and Garden, and had no knowledge of this famous grant, issued in her name, two years prior to this report, and that the man whom they claim gave them the grant, Lord Cornbury, was opposed to these grants. Did he sign it? Did he know anything about it?

Plate Forty-five

VIEW OF FEDERAL HALL AND PART OF BROAD STREET, 1796.

T. SMIT'S VLY IN EARLY TIMES
(Present foot of Maiden-lane - 1800.)

July 29. 1707. (see index).

Representation to the Queen in regard to several Acts of New-York.

[New-York Entries, G, 83.]

To the Queen's most Excel^t Maj^ty

May it please your Majesty.

Having under our consideration such laws passed in New York as have not yet been confirmed or repealed, We beg leave for the present to lay before your Majesty two of the said Acts, which in Our opinion ought in the first place to Receive Your Royal Pleasure, Viz^t

An Act for Vacating, breaking and annulling several Extravagant Grants of Land made by Col^l Benjamin Fletcher, late Governor of this Province, under His Majesty; past at an Assembly held there the 2^d of March 169⅞.

TRINITY
BREAK YE MY COMMANDMENTS?

and another Act intituled

> An Act for the Repealing several Acts of Assembly, and Declaring other Ordinances publish'd as Acts of Assembly to be Void: Past at an Assembly held there the 27th November, 1702.

Upon which we humbly Represent to your Majesty, that upon the Earl of Bellomont's arrival in that Province, he met with great difficulties by reason of several undue practices introduced there by the said preceding Governor, and particularly in relation to Extravagant Grants of land, whereof the Earl of Bellomont was informed by a Memorial from the then Attorney General of New York, a Copy of which Memorial is hereunto annexed: But in Order to the setting this matter in a full light, We humbly take leave to refer to the Annexed Extract of a Representation made by the then Commissrs for Trade & Plantations to the Lords Justices, the 19th of October 1698, and the Papers relating thereto.

Upon which and for the reasons therein mentioned the said Lords Justices did on the 10th November 1698 write to the Earl of Bellomont to the Effect following.

"Whereas many exorbitant grants of vast tracts of land have been made of late Years (and "particularly in some of the Mohacq's Country) without any Reservation of competent Quit "Rents to His Majesty, or any Obligation upon the respective Grantees, to cultivate and "improve the same, as Reason requires; By means whereof the Frontiers of that Province "are in danger of being weak'ned by Desertion of the Mohacqs and other neighbouring "Indians; and the improvement and peopling of the whole province must of necessity be in "great measure obstructed; together with many Inconveniencies evidently attending the "same; We do therefore hereby direct and require you to put in practice all methods "whatsoever allowed by law, for the breaking and annulling of the said exorbitant, irregular "and unconditioned Grants, And in case of any difficulty therein, that you represent unto his "Majesty, by one of His Principal Secretaries of State, and to His Majesty's forementioned "Commissrs for Trade & Plantations, whatever you judge may be further conducive to the "Effecting of so necessary a Work; And further for the prevention of all such like "Inconveniencies hereafter, We also hereby direct and Order, That for the future You pass no "Grants of Land within His Majesty's said Province of New York unto any Person "whatsoever, under a less Reservation of Quit Rent than two Shillings and sixpence for "every hundred Acres, nor without an Obligation upon the Grantees to Plant, settle and "effectually cultivate the same, within the space of three years at the furthest under the "Penalty of the Forfeiture."

Upon the Receipt of those Orders the Earl of Bellomont called an Assembly which met the 2d of March 169⅝ and passed the first mentioned Act for Vacating several of Coll Fletchers Exorbitant Grants. vizt

> A Grant to Godfrey Dellius and others for a Tract of Land, lying on the Mohacqs River, containing about 50 Miles in length and four Miles in breadth.
>
> A Grant to the said Godfrey Dellius for a Tract of Land lying on the East side of Hudson's River, containing twelve Miles in breadth, and about seventy Miles in length.
>
> A Grant to Coll Bayard for a Tract of Land lying upon a Creek which runs into the Mohacqs River, containing twenty four or thirty Miles in length; Which land is also claimed by the Mohacqs.

A Grant to Captain Evans for a Tract of Land lying on the West side of Hudsons River containing twenty miles in breadth and forty Miles in length.

A Grant to the said Captain Evans of another tract of land Adjacent to the King's farm, on the Island Manhatan, the Contents not known, but described by bounds

A Grant of the fore mentioned Farm to the Church Wardens & Vestry Men of Trinity Church by Lease, for the term of Seven Years from 19th August 1697, The Rent 50 Bushel of Wheat pr Annum.

A Grant to Col^l Caleb Heathcote of a lott of ground, part of the King's Garden containing in breadth about 27 foot, and in length fifty foot, granted to him, his heirs & assigns for ever under the Yearly rent of one shilling.

A Grant to the said Caleb Heathcote of another part of the said Garden by lease for the term of forty one years from the 19th August 1697, at the yearly rent of four Shillings, the contents whereof are uncertain, as it is described by being bounden by the Fence of the said garden, so far as the said garden in the rear does extend, and from thence into Hudson's River as far as Low Water Mark.

Besides the Eeight foregoing Grants so Vacated as aforesaid, there do still remain in force several other exorbitant grants with the particulars whereof we shal forbear to trouble Your Majesty, til such time as it shal be judged proper by Your Majesty to have the like method taken for Vacating and annulling the said remaining grants by an Act to be passed in that Province, which however, from the reasons given by the Earl of Bellomont, We do apprehend may prove a work of great difficulty.

We therefore humbly Represent to Your Majesty that the aforesaid Act for vacating Col. Fletcher's Grants having been transmitted hither, Objections were made against the confirming the said Act, which objections are in substance as follows

"That such Proceedings wou'd render the Properties of all lands uncertain and precarious."

"That the Lords Justices's Instructions being to break the Grants by legal means, the word "legal must relate to the law in being."

"That therefore these Instructions can only mean to Vacate the Grants by a Proceeding in "the Ordinary course of Justice."

"That the lands of Dellius and Bayard were by the Grantees purchased of the Indians, and "afterwards Grants were taken of them from the Crown under final Quit Rents by way of "acknowledgment to fix the tenure and Soveraignty of them in the Crown so that as to these "Lands the Revenues are not Diminished by the said Grants but the territories and Dominions "of the Crown are enlarged."

"That if leases and Conveyances were made of any of the land thus granted, the "particular persons therein concerned would suffer unjustly. Nobody would lend Mony "upon Mortgage of any of these lands, or make Improvements under these Grants, or accept "of any leases or Conveyances upon them, nor accept them upon Settlements in Marriage &a

"That supposing the Grants are Extravagant they ought not therefore to be annulled, but "rather retrenched, and brought to reasonable limits.

"That if the Power of Revoking Grants be left to a Govr Council and Assembly, the Govr

TRINITY
BREAK YE MY COMMANDMENTS?

" may have the choice of so many of the Council, and have such an influence in having his " own Creatures returned to be of the Assembly, that he may at any time Act arbitrarily & " unjustly in such Revocations. That in this Case no redress being to be had, otherwise than " by complaining to the Crown of such undue Elections, and the matter being to be proved " by witnesses to be produced here it will be so chargeable that few or none will venture upon " a thing of that nature, so that Justice will hardly be obtained.

" That His late Majesty having solemnly declared under His great Seal, that Grants made " by his Gov^rs with the Advice of the Council, shou'd be good and effectual against His " Majesty, his Heirs and Successors &^c It wou'd lessen the Royal Credit."

To all which Mr Champante then Agent for New York, did reply as follows;

" That the Assembly being according to the Constitution of the Province, their passing the " Act which repeals the Grants, is pursuant to the Lords Justices Instructions, which intended " a Proceeding by the Legislative Power, by the Words made use of, vizt BREAKING, ANNULLING.

" That Dellius' and Bayard's Grants were surreptitiously Obtain'd, the Proprietors being " then out again the French, and not above six or Eight being privy to the Transaction; " Besides that these few were made Drunk, and a Vast tract of land obtained for a very little " purchase, upon my Lord Bellomont's Entring on that Govern^mt and his Lord^p's citation of the " Persons therein concerned, two of the Patentees of the Mohacq's land, surrendered their " part of the said Grant, declaring that their meaning was, that the land should solely & " wholly be kept by them in Trust for the benefit of the Mohacq Indians.

" That the Indians themselves did by a public Address to the then Commander in Chief & " Council there, thank his late Majesty for restoring to them their Land.

" That if Dellius' Grant be not revoked the neighbouring Indians will be constrained to " Desert and fly to the French.

" That in cases of this Nature particular claims may afterwards be provided for.

" That the Demesnes of the Royal Forts at New York, vizt the lease made to the Church of " the King's Farm, which used to supply the Governors with Corn; the meadow passed away " to Captain Evans, and part of the Kings garden to Colonel Heathcote are extravagant tho' " not in extent yet in their nature.

" That there is not a Christian Inhabitant on either of Mr Dellius grants, neither that " whereof he was sole grantee, nor on the other wherein Schuyler and others were Partners " with him, vizt The Mohack's Land, and the other Grants are liable to as great or greater " exceptions."

A strong Argument urged for Vacating these grants is, that great Quantities of Masts and other Timber fit for Naval Stores, grow upon the lands thus granted away, which cannot be Regained to the Benefit of the Crown, till the Grants are vacated.

Sr John Hawles then Solicitor General having been consulted upon this Act, We humbly take leave to annex hereunto a copy of his Report, together with the Exceptions taken thereunto by the said Agent of that Province.

Thus the matter stood 'till the Lord Cornbury's arrival in that Province, when an Assembly was called, and the foresaid Act was passed *for Repealing several Acts of Assembly, and Declaring other Ordinances Published as Acts of Assembly to be Void.*

Upon which we take leave to observe that this last mentioned Act Repeals three Acts therein particularly named, which said Acts were passed by the Earl of Bellomont, vizt

TRINITY
BREAK YE MY COMMANDMENTS?

An Act for Regulating Elections for Representatives in general Assembly in each respective City and County within this Province. Which Act was confirmed by His late Majesty the 5th of September 1700, and appears to us to be a good law, and ought not to have been repealed by the Assembly there without your Majesty's leave first had.

An Act to prevent vexatious suits, and settling and quieting the minds of His Majesty's Subjects within this Province.

And the forementioned *Act for Vacating and Annulling several Extravagant Grants made by by Col^l Fletcher, late Governor in this Province, under His Majesty.*

And by general Words the said Act repeals all Acts past at an Assembly held there, from the 19th of Augt 1701 to the 18th of October following; and in due time We shal lay before Your Majesty, such of them as we conceive may be fit and proper for Your Majesty's Royal Confirmation.

The reasons given for the repealing the foresaid Acts are set forth in the Preamble of the said Act of Repeal as follows, vizt

"That several Acts and laws have lately been past in this Colony, with plausible and "colourable titles and pretences, some of them incongruous and unjust in themselves, others "to obtain private and sinister ends under the Cloak of Public Good, many pretended Acts, as "laws, by persons unqualified by right or law to sit or act in the Legislative power, and by "several as were not the choice of the People, And all of them instead of being for the profit "and Advantage of the Subject as they Ought to be, have been and proved to the Destruction "of Property, the confining and enervating of liberty, ruinous to trade, to the impoverishing "of the people, a Discouragement to Industry, and hurtfull to the Settlement and prosperity of "the Colony."

Upon which we beg leave to Observe that the Lord Cornbury has not given us any particular instances or proofs to make good the foresaid general allegations, several of which seem to be of an extraordinary nature, particularly those relating to undue Elections, and Disability of several members who constituted the Assembly is therein mentioned. But on the Contrary such of the so repealed Acts as have hitherto been under our own Consideration, appearing to us to be for Your Majesty's service and the good of that province, We are humbly of Opinion that Your Majesty be pleased to Signify Your disapprobation of the Aforesaid *Act* passed in Novemb^r 1702 *for Repealing Several Acts of Assembly and declaring other Ordinances published as Acts of Assembly to be void.*

As to the *Act* passed by the Earl of Bellomont *for Vacating breaking and annulling several Extravagant grants of Land made by Colonel Benjamin Fletcher, late Govr of that Province.*

We are humbly of opinion that such Exorbitant grants as are therein mentioned are highly prejudicial to that Province, Wherein We are confirmed by Lett^rs from the Lord Cornbury, complaining of the said Grants; and Declaring that for some time he refused to pass the Abovementioned Act of Repeal, whereby the foresaid vacating Act is among others Repealed, 'till he was induced thereunto by the Assembly's having at the same time passed the Mony Bill, in that Lett^r mention'd. And we do therefore concur with the late Cômiss^rs of Trade and Plantations, in their annexed Representation, That it is absolutely necessary the said grants be vacated; But that an Allowance be nevertheless made by way of Regrant to every such grantee of a suitable number of Acres, not exceeding two thousand, to any one person under a

TRINITY
BREAK YE MY COMMANDMENTS?

yearly Quit Rent of two shillings and sixpence for every hundred acres, with a covenant to plant settle and effectually cultivate at least three Acres of Land for every fifty acres so taken up, within three years at the furthest, upon forfeiture of every such grant. If Your Majesty shal think fit to Approve thereof then We further propose, for the more convenient and equal setting out such Lands, That the Governor Lieut. Govr collector Secretary and Surveyor Genl of that Province for the time being (the Surveyor General always to be one) or any three or more of them to be empowered to set out the lands so to be Regranted, they having regard to the profitable and unprofitable Acres, so that each grantee may have a proportionate number of one sort and t'other, as was done upon the Planting and Settling Your Majesty's Kingdom of Ireland.

And that the production of Naval Stores in these Parts may not receive any impediment by such grants, We further humbly Offer, that in all new patents the grantees be Restrained, under the Penalty of forfeiting their Patent, from burning the Woods to clear the land: And that there be a particular reservation of all Trees of the Diameter of twenty four Inches and upwards, at twelve inches from the ground, for Masts for Your Majesty's Royal Navy, as also of such other Trees as may be fit to make Plank, knees, &^c for the use of Your Majesty's Said Navy.

And in order thereunto We humbly offer that Your Majesty be pleased to approve and confirm the said Act for vacating Col^l Fletcher's Extravagant Grants.

All which is nevertheless most humbly submitted

DARTMOUTH
HERBERT
PH: MEADOWS
J^n PULTNEY.

Whitehal
July the 29th 1707.

Whitehal
June the 28th 1708.

P. S. Her Majesty having been pleased by Her Order in Council of the 26th of June 1708 to confirm One Act past at New York the 2^d March 169⅘, Entituled an *Act for Vacating, breaking and annulling several Extravagant Grants of Land, made by Colonel Fletcher late Governor of this Province under His Majesty*, And to Repeal one other Act also past at New York, the 27th November 1702, Entituled, an *Act for Repealing Several Acts of Assembly and Declaring other Ordinances Published as Acts of Assembly to be Void* We inclose to Your Lord^p Her Majesty's said Order which you are to cause to be published and Entred in the Council Book as usual.

By their Lord^ps' Order
Wm POPPLE Ju^r

We Desire that Your Lord^p will please upon Your arrival in New York, to forward these Inclosed Packets to the several Governors to whom they are Directed, the same being of importance to Her Majesty's Service

By their Lord^ps' Command
Wm POPPLE, jun^r

Additional Instruction for Lord Lovelace.

[New-York Entries, G. 298.]

[ANNE R.]. Additional Instruction to Our Right trusty and Welbeloved JOHN Lord Lovelace, Baron of Hurley, Our Captain General & Governor in Chief of Our Province of New York, and the Territories depending thereon in America. Given at Our Court at [Windsor] the [Twentieth] day of [July] 1708, In the Seventh Year of our Reign.

WHEREAS We have thought fit by Our Order in Council of the 26th of June 1708 to Repeal an Act past at New York the 27th of November 1702. Entituled *An Act for Repealing several Acts of Assembly and Declaring Other Ordinances publish'd as Acts of Assembly to be Void;* And whereas by the said Order, We have likewise thought fit to confirm and approve an Act past at New York the 2d of March 169⅔ Entituled, *An Act for Vacating, Breaking and Annulling several Extravagant Grants of Land, made by Colonel Benjamin Fletcher, late Governor of this Province under His Majesty,* by the Confirmation of which Act, several large Tracts of Land (as by the said Act will more fully appear) are Resumed to us, and are in our Disposal to Re-grant as we shall see Occasion; OUR WILL and PLEASURE therefore is, that you may Regrant to the late Patentees of such Resumed Grants, a suitable number of Acres, not exceeding two thousand to any one person; And that in such Grants, as well as in all future Grants, there be a Reservation to us, Our heirs and Successors of a Yearly Quit Rent of Two Shillings and Sixpence for every hundred acres, with a Covenant to Plant, settle and effectually Cultivate at least three Acres of Land for every fifty Acres, within three Years after the same shall be so granted, upon Forfeiture of every such Grant.

And for the more convenient and equal setting out of all lands to be granted within our said Province of New York, OUR further WILL and PLEASURE is, that you our Governor, or the Commander in Chief of our said Province for the time being, the Collector of Our customs, our Secretary and Surveyor General of New York, for the time being, (the Surveyor General always to be one) or any three or more of You and them, do sett out all lands to be hereafter granted, and that therein You have Regard to the Profitable & unprofitable Acres, so that each Grantee may have a proportionable number of one sort and the other, As likewise that the length of Each Tract of Land, to be hereafter granted, do not Extend along the Banks of any River, but into the main land, that thereby the said grantees may have each a convenient share of what accommodation the said Rivers may Afford for Navigation or otherwise.

And to prevent any Impediment which the production of Naval Stores in our said Province may receive from such Grants, You are to take care, that in all new patents for land, there be Inserted a clause to restrain the grantees from Burning the Woods to clear the land, under the Penalty of forfeiting their Patent, and You are to use Your Endeavours to procure an Act to be passed in the Assembly of our Province of New York for that purpose.

And lastly OUR PLEASURE is, that in the said patents, there be likewise a Particular Reservation to us, Our Heirs and Successors, of all Trees of the Diameter of twenty four Inches and upwards, at twelve Inches from the ground, for Masts for Our Royal Navy; as also of such other Trees as may be fit to make plank, Knees &a for the use of our said Navy.

[The words within brackets in the preceding document are added from *New-York Council Minutes*, X., 283.—ED.]

It is strange to find the dubious character of this claim admitted even by Reverend William Vesey, for when Governor Hunter was inducted into office, one of the most vexatious questions he had to face was the possession of this farm. Governor Hunter was appointed June 14th, 1710, and we find a letter in the Colonial History of the State of New York dated February 20th, 1711, in which it is stated that Robert Hunter had refused to join with Will Vesey in a petition to the crown for the Queen's Farm; that he had given it during his term of office which was all that he could do.

Does this declaration from Colonel Morris to the Lord of London signify that this grant was treated as valid, or does it indicate that after the Crown's affirmance of the vacating and annulling act, in 1708, and the Crown's disapproval of the repealing Act of 1702, this grant of this farm was recognized as a nullity, and it was beyond the power of any Governor to grant it.

And as to William Vesey's dubious idea of the grant, read the letter following it:—

Colonel Morris to John Chamberlayne, Esq.

[New-York Papers; As., Art. 99.]

Worthy Sir

My Lord of London laid his commands on me to transmitt him an account of the affairs of Mr Moore,[1] which I have done, and inclosed me duplicates of what Affidavits I sent to his Lordship, and of Mr Sharp's narrative, who kept a Diary while in N York. I wrote also to the several ministers in New York to tell me what they knew of it to take away all Pretence of acting clandestinely, and to give those of them, who were my Lord Cornburys friends an opportunity of saying what they could in his justification, for you must not wonder that

[1] Rev. Thoroogood Moore; of whom see Ante, IV., 1077. — Ed.

TRINITY
BREAK YE MY COMMANDMENTS?

Mr Vesey begins to set up to head a party of those; I have got no answer from any body but honest Elias Neau, who tells me he has given you what account he could of that matter, which is inclosed with my letter. You may see by those affidavits there could be no such thing as a Parole given, for my Lord was so far from admitting any thing like it that he would not even permitt him to go to Church, tho' security was offered for his return, and most certainly the officer in my Lords absence, durst not besides how can a man be said to be at liberty on his Parole when orders are given from officer to officer, to keep him a Prisoner, and a centinel charged with him; if he was on his Parole, why was the centinel put in irons, and so severely punished for letting him make his escape, this ought not to have been done if he was on his Parole. I am sure I never heard of any such thing till I saw a Paragraph of your letter to Mr Sharp; His Lordship or his friends in England have started that which nobody here ever dream't, could have been possible to offer in a case so well known but the Affidavits with sett[1] that matter in its true light. This pretence that Mr Moore deny'd the Queens Supremacy is as week as its untrue, for if he really had my Lord had then scope enough to gratify a resentment, which his conduct to Mr Moor shew'd he did not want. Burlington was not without a strong Goal which would have been a more severe confinement than the Fort of New York, and a Tryal upon the Spot where evidences (if any) were to be had, was much more natural as well as justifiable, than sending him to England 3000 miles off, where no such thing could be proved against him. All that Mr Moor wanted was to go to England, to lay his complaints at the feet of his superiours, and would he or any of his friends in the least have beleived my Lord would have sent him there, he never would have undertaken so hazardous expensive and fatigueing a journey to New England in order to procure a passage home, no, his fears suggested other things and whether groundless or not I shall not determine, I have heard it offered that the reason of my Lords intentions in sending Mr Moore home, was because he was cautious in meddling in Ecclesiastical affairs, why then did he confirm that ridiculous suspition of Mr Moore by Coll Ingoldsby that was properly an ecclesiastical affair and meddling with a witness but of this enough

Here begins Coll Hunter's case

If my memory does not very much fail me, I mentioned to you in my last, which went by the Mast Fleet, a Representation was made by this and the Neighbouring Provinces, I have been told some of the contents of it but could not get a sight of it, tho' Coll Heathcote and myself not only endeavor[d] it, but had apply'd to the Governor who very readily assured us, that he would remove any just cause of complaint, if in his Power, when it was known what it was, tho' neither he nor we could think any under his administration in his Power to remove, we thought that if the Representation was to the society, we being Members of that body had some kind of right to a sight of it, and as we had resolved to use our Interest to get removd whatever was the occasion of it so we should have been very ready to have joyned in Representation that was necessary to transmitt to you, as we signified by letter to Mr Vesey & Mr Henderson, in whose hands that Representation was but have received no answer from them at all, tho' the common civility of a line in return would not have cost them much trouble. I could wish these Gentm[n] that are concerned in this matter, who are missionaries of the Society could be prevailed on to beleive that makeing representations, and forming parties in Government or joyning and encourageing those already formed is not the interest of their mission, nor can be no good effect of it, and that others concerned may be told, if their own experience have not already convinced them of it, how much the more

[1] will sett? — Ed.

difficult it is to reconcile men than to divide them, and how much more becoming Persons, whose proper business it is to preach the Gospel of Peace

If what is contained in that Representation be true I can not see what should hinder them from letting us see it especially when no other use would have been made of it than to have removed the causes of it at least so far as could be done in New York and Jersey where we were concerned, and was assured of the Governors concurrence, how far they have accused him I dont know, tho' I am told they have done it but not in direct Termes. I hope they have not because his conduct towards the Church merits a better Treatment, which they must have been ignorant of, if they have ventured on any thing that looks like arraigning of him, But because I too well know, the implacable temper of some and the folly and weakness of others, and that many honest men are much easier prevailed upon to joyn a Representation of things than enter into a nice examen of the Facts on which they are said to be grounded I take levave to lay before you an account of the Governors conduct with respect to the Church, since his arrival here, and this from my own knowledge and such unquestionable accounts as can be proved on oath if there is necessity, though there is very little of it relating to ye church but what I have been eye or ear witness to

On his arrivall application being made to him for the Queens Farme by the Church at New Yorke, he immediately gave it them during his time. Mr Vesey the great mover in all these matters instead of giving him thanks procures an address to be made to him from the Vestry, praying him to joyn with them in a Representation of that matter to the Queen, and pray Her Majesty to grant it to them, I suppose you are not ignorant that the Church pretends a right to that Farm by grant from Coll Fletcher, which grant was vacated amongst others by Act of Assembly, and that Act confirmed by the Queen, Coll Hunter told them he could not joyn in any thing of that kind, the Queen very well knows the state of that case nor would he endeavour to put it out of the Power of his successor to oblige them that being a conduct not to be justifyed, that he had given it during his time which was all he could do — This Gift was so far from pleasing Mr Vesey that it had contrary effects, and because the Governour would not go all the lengths he was desired he was Industriously represented to the People as no Church man. I can't see what end this could serve besides gratifying too much ill nature except it were discouraging the Church, and encouraging the dissenters (if either of them should beleive the Person at the head of affairs here was a Dissenter) or really makeing the Governour what they pretended he was, but it was not in the Power of some men who wear the Churches Livery by an imprudent conduct to make the Governour an enemy to the Church, for no sooner was application made to him in behalf of the Church at New Rochel, the building of which had been a long time opposed, but he gave an order to Coll Heathcote & myself to appoint a Place for it in the High Street, which we did, saw the Foundation laid, and it's now finished or very nigh it, being a very good Stone Building & his purse as well as his power contributed to make it what it is.

The Queens Chappel in the Fort, that from the time of Coll Fletcher till his arrivall had been put to the several uses of Store house, Bear house, and work house, he took care to have decently fitted up and applyed to the use it was built for, and the Soldiers who before were carried out of the Garrison and during the service stood for the most part in the Steeple, where they could but imperfectly hear are now very well accommodated with Seats in the Chappel, where the Service is regularly performed, and there is yet room for persons to build Pews who want Seats in the church of New York, and who are inclined to build would the

TRINITY
BREAK YE MY COMMANDMENTS?

Governour admit them, which he has hitherto declin'd, but I suppose its on Mr Veseys Score, who takes all the Pains he can to make the People beleive that the fitting up of the Chapple is a rending and dividing of the Church, & has so ill a notion of the Sin of Schism, that he charges it on those who go to worship in the Chappel, wch are besides the Governor, some men of the best figure of the Province, there joyns with him in this, one Henderson, a Missionary of the society's to Appoqueminy who has left that place in order to return to England, pretending he can not get a lodging within the limits of his mission, when he first told me this, I could hardly give credit to it, & advised him not to forsake the station the Society had placed him in without their leave but endeavor as much as he could to answer the end of his Mission in some place near, where a lodging could be had; This advice being contrary to his inclination had but little weight with him, he seeming resolved to return without their Leave, if he could not procure it, whether he applyed for it or not I can not tell, he is going home in quality of Agent for a Party, or their letter carrier I do not know which, nor do I much discredit his not being able to procure a lodging in the place he was sent too, the extraordinary fire of his Temper being such, that his heat deserves rather the epithet of madness than Zeal, and did he prove as much an Incendiary at Appoqueminy as here, the society have no reason to be displeased with his return and I hope won't put it in his power by any mission to these parts to do the Church so much hurt as his ungovernable Temper must necessarily occasion

I am told these men Arraign the Governor's conduct with respect to Mr Poyer, and the church at Jamaica, the state of that affair I'll lay before you as fully as I can & it is thus.

In Coll: Fletchers time one Party of the Dissenters in the County where Jamaica is resolvd to build a church and in order to it got subscriptions, and materials enough to build it about three foot from the Ground, but finding themselves unable to perfect it without the assistance of the rest which could not be got by persuasion they resolved to attempt the getting an Act of Assembly in their favor. Coll Fletcher who was then Governor & James Graham Esqre then speaker of the Assembly, perceiving the Assembly inclined to raise money for the building of that church, and settling a maintenance for Ministers; thought it a fit opportunity to do something in favor of the Church, before the Zealous fit left them; Accordingly Graham who had the drawing of their Bills prescribed a method of Induction and so managed it that it would not do well for the Dissenters, & but lamely for the church, tho it would do with the help of the Governor, & that was all, but it was the most could be got at that time, for had more been attempted the Assembly had seen through the Artifice being most of them Dissenters & all had been lost, by virtue of this Act the church was built and a dissenting Minister called (and if I mistake not) Paid, the other dissenters who were forced to comply were very much dissatisfied at this Proceedure of their Brethren, & many of them appeared in the Interest of the Church thinking no way so effectual to defeat their adversaries, and this was the beginning of the Church of England in Jamaica on Long Island the Church and the Parsonage house continued in the possession of the Dissenters till some time after the arrival of Mr Urquhart when a Representation was made to my Lord Cornbury that the Church and house being built by publick Act could belong to none but the Church of England. My Lord upon this gives his Warrant to disposess the Dissenters which immediately by Force was done without any Proceedure at Law and Mr Urquhart put into possession of them this short Method might be some service to the Minister but was very far being any to the church, as no such unaccountable step can ever be, Mr Urquhart kept the possession during his life, and tho' he

TRINITY
BREAK YE MY COMMANDMENTS?

gained not many converts yet his conduct was so very good, that I do not think he lost any after Mr Urquharts death his widows daughter married a Dissenting Minister, & she put the Parsonage House into his possession in which it continues till now, this happen'd much about the time of Coll Hunters arrival, whether application was made to him or not I can't tell, but some changes in the Magistracie being made, and by chance one or two put in that were patrons of the Dissenters Mr Poyer & his friends choose to apply to those they were sure would refuse them, and not to those in Place, who were firm to their Interest, & being refused complained to the Governor, who immediately sent for the Person, and ordered him to be prosecuted that it might appear whether he had failed in his duty or not whether the Prosecution was continued or not I can't tell, but I happened to be in the Governors chamber when this judge and a dissenting Minister came in, & this matter was talked of, he said that the intention of the Legislature at that time was to raise a maintenance for a dissenting minister all the Assembly but one being Dissenters and knowing nothing of the church, that that[1] being the intention of the Law makers was the meaning of the Law and he hoped the Dissenters might enjoy what was so justly their due, or at least not be deprivd of it without due course of Law, as they formerly had been I told him that the Legislature did not consist of the Assembly only, but of the Governour and Councill joyned with them, whose intentions might be quite otherwise, & I believed were, that it was most certain the Governor at that time never intended to settle a Dissents Clergy, that the meaning of the Legislature was the meaning of the whole Legislative and not of any part, and was most likely to be found out by the words of the Act which most plainly appeared in favour of the Church of England, the Governor joyned in the Argument, and argued with a great deal of Force in favour of the Church, who he said he could not help thinking was in the right with respect to their claim, that they may be sure matters of Property should be determined by the ordinary course of the Law, by which perhaps they being numerous might weary Mr Poyer: being a poor man, but that Poyer should have his purse for the carrying on that Suite @ a day or two afterwards told Poyer so himself. Some time after that wrote to him giving the Gentleman who carryd the Letter in charge to tell him he still continued in the same mind; the Governor being at Jamaica repeated the offer of bearing the whole charge of the Suit and pressed Mr Poyer to undertake it Coll Heathcote also pressed him to undertake it giving him the same assurance from the Governor; and Poyer promised to do it, but has been prevailed on to decline that method (as he says) till their Representation reach England, and I beleive the Poor man and his friends are weak enough to beleive, that their Superiours there will enter into measures to displace the Governor for not dragoons in their favour as his predecessor did or get orders for his so doing, which may gratify their little Itch, and that's all for it will be very far from doing any good

The Act to settle the Church is very loosely worded which (as things stood when it was made) could not be avoided, The Dissenters claim the Benefit of it as well as we, and the Act without much wresting, will admitt a construction in their favor as well as ours, they think it was intended for them, and that they only have a right to it, there is no comparison in our numbers & they can on the death of an Incumbent call persons of their own persuasion in every place but the City of New York and if by force the Salary is taken from them & paid to the Ministers of the Church it may be a means of subsisting those Ministers but they won't make many converts among a people who think themselves very much injured whereas let this matter be once regularly determined, and then their mouths are forever stopt, and they'll

[1] *but that. New-York Documentary History*, III., 245. — Ed.

TRINITY
BREAK YE MY COMMANDMENTS?

live in Peace and then the Church will in all probability flourish and I beleive had at this day been in a much better position had there been no Act in Her favor, for in the Jerseys and Pensilvania where there is no act there are four times the number of Church men than there are in this Province of N. York, and they are soe most of them upon principle whereas nine parts in ten of ours will add no great credit to whatever church they are of, nor can it be well expected otherwise for as New England excepting some Families was ye scum of ye old, so the greatest part of the English in this Province were the scum of the new, who brought as many opinions almost as Persons, but neither Religion nor Virtue and have acquired very little since. It is with the rising generation the work is to be done, and schools will be one great means of doing it, but of that I shall give you my thoughts by another conveyance having I fear too much tired you with the length of this. I thought it my duty to do the Governour justice, and speak what I know to be true of him had he proved an enemy instead of a friend to ye Church, I should not have scrupled to have wrote the truth of him with the same freedom as I did of his Predecessor.

Since writing of the above the Governor wrote to Mr Poyer a Copy of whose letter is enclosed (N° 1) to which Mr Poyer made answer (N° 2 In it he confesses the offer the Governor made him of his purse, There was two or three days consultation between Mr Vesey, Henderson, and Poyer to form that letter in which (agreeable to their other conduct) they have taken care to sett the severall Parts at Variance one with another, I have made some observacôns on it which follow

Affirmation	Contradiction
The frequent Applications I have formerly made to your Excellency prov^s ineffectual have oblig^d me patiently to sitt down under the Burden of them for about fifteen months last past without the least complaint.	Whether these applicôns were Particular or too General I humbly refer your Exc^ly to ye Memorials & Pet^ns I have in relation to this matter present^d you, and a little lower I acquaint^d ye Excell^cy when you was pleased to make that kind & generous offer of your Purse

to support it that I could not put a matter of so generall concern in Action, without the advice and direction of my Diocetian and of the venerable Society &c to whose judgement I have long since submitted the whole affair

Observation.

If Mr Poyer had made frequent applications and gave the Govr Severall Memorials and Petitions, and had represented that matter to my Lord of London and the society how can it be said that he sate down patiently without making the least complaint?

2^ndly As it cannot be supposed that he made any memorials or petitions without complaining, so 'tis very plain from his own words he could make none to the Governor for to what end could these memorials &c be if he was resolved not to meddle in a case of so general concern without the direction of the Society &c to whom he had as he says submitted it—

3dly If any memorials & petitions were made to the Governor they must be made before or after the beginning of the 15 months not after by his own confession and before he could not, for from his Induction July 18th 1710 to the 18th October following there was but one Quarters Salary due and whether it would be paid him or not he could not tell 'till he had used the methods directed by Law which he did on the 27th following being nine days after, so that before there was no room for any application petition or memorial to the Governor

TRINITY
BREAK YE MY COMMANDMENTS?

What he gives as an answer to the several Questions the Governor proposed is not with that modesty I think became him for it was his proper business to get the Information the Gover^r desired he being the person aggrieved and not to bid the Governor do that himself: he concludes with hoping that letter joined with the memorials & Petitions he had formerly preferred would sufficiently inform his Excellency of the state of his case.

Any person or Stranger to things that read this and the foregoing parts of his letter would conclude that he had presented several memorials & petitions without any effect but as it is plain by what goes before he could not, so really he did not, and nothing is more untrue than what he asserts for the Governor protests he never had any other papers petitions or memorials from him or any body else relating to the Church of Jamaica than the Copy N° ( ) and that N° ( ) the first a loose Scrip of paper signed by nobody & wrote in such a manner as I should have been ashamed to have given to an equal the other a Copy of a Record of Court signed by the Clerks but if men will give themselves leave to say anything who can be safe.

Mr Vesey who had and still makes a tool of that weak man Poyer with him prevailed upon Mr Evans of Philadelphia and Mr Talbot as I am told by some of themselves to sign a Representation in direct terms against the Governor; this representation was not made (as all representations ought to be) at a general meeting of the Clergy but drawn up in private and so sent about to get the subscriptions of as many as they could for this end they brought it to Mr Makenzie on Staten Island who no sooner read it but discovered the falsehood & wickedness of it and convinced Mr Talbot who I believe signed without reading of it on the credit of Mr Vesey Henderson and Poyer for he exclaims very much against Vesey for surprising him into the signing of a paper just as he was taking Boat: this Representation by the unanimous consent of these that were there present was destroyed but however a representation running in their heads and they a Gogg to be dabbling in politics (an inclination which I wish our missionarys had less of) a representation was resolved upon to be made to my Lord of London of the state of the Church of Jamaica. It was signed by those who were there and sent about to get the hand of the rest many of whom signed it tho' at the remotest distance and probably Strangers to matters of fact as well as unconcerned in things relating to this Province. The Governor being informed of these things resolved to set that affair in a true light and convince those of their errors whom weakness and not malice had engaged in it Accordingly sent for all the Clergy in his Government and to as many as came he made this Speech N° ( ) who next day presented the address N° ( ) they seemed to be ashamed of their procedures and I suspect they have but too much reason to be so for all our endeavours cannot prevail on them to discover the contents of that Representation and why they should so industriously conceal it I can't see except it be that it be that it won't bear the light in this part of the world where matters can be examined into. * * * *][1]

Feb: 20 1711.

[1] The passages included within [ ] are from *New-York Documentary History*, III., 248, 249. — Ed.

TRINITY
BREAK YE MY COMMANDMENTS?

he formerly shewed. If he gave the Bishop any hopes of his endeavouring to reconcile misunderstandings that had arisen between him and a great part of his congregation, he has taken an od way to bring it about; for some days before his entry was handed about among the French and Dutch a copy of a letter attested by him, written by several of his parishoners, to my Lord of London, complaining of Mr Vesey's ill conduct, in which was a paragraph expressing our fears that his indiscreet behaviour would give those foreign congregations some advantage over us. This was urged with no little vehemence to perswade those people that the letter was designed as a complaint against them, and to stirr up their resentment against us; and it had the effect, till we gave them the opportunity of reading the whole letter. We have reason to think ourselves slighted by his Lordps furnishing Mr Vesey with a copy of our letter, without giving us any answer to it, and the use that has been made of that copy will but terrify others from making any representations in favour of the Church.

My Lord of London makes Mr Vesey his Comissary it seemes, because he knows him better then any of the other Clergy. I inclose you a copy of his letter written to one of the officers in these troops when he was at Boston going to embarque for England; by which you may know him as well as his Lordship. He there very frankly offers a reward to procure him a stipend from home: does not that smell of simony? and you will see in the latter part of the letter how seriously he must lay to heart the reflections which his forced constructions would fain make ours import against the French and Dutch.

I humbly ask pardon for trespassing thus long on your patience, the subject and his Exly's commands have obliged me to it. I hope there is some way to skreen him from these affronts, or he must be very uneasy and his governmt rendered cheap. I doubt I must speedily be troublesome to you again on this affair; in the mean time I humbly recommend myself to your favour, and am with all possible honor, Sir

Your most obedient
humble Servant
GEO: CLARKE.

New York
Novr 15, 1715.

The inclosed address will shew you the Grand Jury's thoughts of Vesey's conduct.

(Indorsed) "Letter from Mr Clarke Secy of New York
"to Mr Popple, dated 15th Nov. 1715, wth
"several papers shewing the ill practices
"and seditious behaviour of Mr Vesey the
"Bishop of London's Commissary there.
"Referr'd to in Brigadr Hunter's lrê to
"ye Secy of 9th Nov. 1715."

Reverend Mr. Vesey to Colonel Riggs.

[New-York Bb., 48.]

New York Decr 2. 1709.

My Dear freind Coll. Riggs

I humbly intreat you to remember me in England and to vouchsafe me your favour in these particulars, as

TRINITY
BREAK YE MY COMMANDMENTS?

1st To put the Bishop of London in mind to adjust the affair of the farm, by the Queen's letter, or otherwise, before the new Governour leaves England that it may be no cause of dispute between him and us after his arrival.

2d That the farm tho' now of small rent £30 per annum will in a few years be much more considerable, and that it deserves the utmost efforts to secure it to the church, which may easily be effected at present, but hereafter not.

3d That if the farm and consequently my house rent be taken away, my income in this chargeable publick station will not support me.

4th That I deserve some encouragement as well as others haveing served the Church 12 years with success, that when the people belonging to the men of War have been sick on shore, have visited them and done offices for them, tho' their Chaplains have officiated as ministers of parishes at Boston Philadelphia and towns very remote from New York, and received the profits; and also that in the absence of the Chaplain of the Fort I have taken care of the sick soldiers and their familys, baptized their children and buried their dead; and all this without any consideration, except that for about two years I was Chaplain to the Triton prize, which is now gone; that Mr Harris at Boston who is three hundred miles and Mr Evans at Philadelphia 100, from this Province, are the Chaplains to the two guard ships of this Province; that besides what the Revd Mr Evans has at Philadelphia which is more than all my salary, he has a liveing of above £150. per annum in England; that the Missionarys of this Province besides their establishments here which are look'd on proportionable to the country as good as mine have all of the £50 each per annum from the Society.

5th That these are all worthy gentlemen and doe great service to the Church, and well deserve what they have, and I dont in the least envy their happiness; but with submission think that some care ought also to be taken of me, who have served the Church here much longer by many years than any of them, I may say it without vanity, with more success, whatever noise some of them may make in England.

6. Therefore in justice I ought to have the allowance of £50 per annum from England as well as they, since my ship is gone, my perquisites sunk, and my annual income sometimes leaves me in debt in this publick and expensive place, where a man is obliged to live in another manner than in a country town.

7. That my Lord Bishop of London be moved to petition the Queen in Council for such an annuall allowance out of the Treasury of £50. as his Lordship did for an £100. per annum for the Minister of Boston, Mr Harris, and I think as much for Mr Barkly and easily obtained it.

8. That if Coll Riggs and Mr Newman with the concurrence of the Bishop of London shall effect this great matter for me, *I shall make them both ample satisfaction.*

9. But if this can't be obtained (as I hope it may by the earnest application of my friends) then I hope my friends will procure for me the debt of £20. from the King's bounty, which I ought to have had when I left England, which King William promised for encouragement to every Minister that would goe into the Plantations and so was continued by Her Majesty Queen Anne, and that this £20. if procured (after Mr Newman is satisfied) be put into Coll. Riggs hands to be disposed of for me as he shall think proper, *either in sollicitations* or in goods, *Coll: Riggs reserving for himself so much as he pleases for his trouble.*

10th That Coll. Riggs will be pleas'd to give me a good character, if he thinks I deserve it, to my Lord Bishop of London, to observe what he said about the sermon I presented to him,

and say that I and my congregation are well satisfyed in each other and that there is great love and unity among us and the Church flourishes and that the Dissenting preacher at present is likely to gain no ground.

11th That (if Coll. Riggs believes me) I declare that whatsoever some might suggest to his Lordship, I never intermeddled with Government in my Lord Cornbury's time, nor ever did I council, advise to, or concern my selfe in his administration, so false is that detraction.

12 That I hope Coll Riggs & the Bishop of London with other friends will recommend me and my church to the favour and protection of the new Govr and that affectionately; otherwise I fear we shall sink under so great an opposition both from the French and Dutch, who maliciously seek our destruction

13. That Coll Riggs will enqure and send me word whether those laws, that concerned my salary and church, have obtained the Royal Assent, and if not, to put the Bishop of London in mind of them.

And Sir, if it comes in your way to serve me in any of these particulars, it shall be gratefully acknowledged by, Dear Coll:

Your most assured freind & Servant
W. Vesey.

New York Nov 15th 1715.

I have compared the aforewritten letter with the originall and find it to be a true Copy
(signed)
John Johnson Mayor.

Letter of Governor Hunter to the Lords of Trade, dated Amboy, April 30, 1716, p. 477:

* * * * * * * * * *

I troubled your secretary with an account of the ill-usage I had received from my Lord of London, and something of the conduct of the new Commissary Mr. Vesey, that gentleman has thought fit to humble himself of late, to acknowledge his errors and promise very warmly a more commendable conduct for the future I hope he is sincere, he has owned that he was put upon going to England by Mr. Nicholson who used him ill for declining it when he first proposed it. The late Chief Justice it seems was in ye plot, but he is dead and I shall say no more of him, but that he was the most ungrateful of all men. I am laboring hard to get the City Vestry to pay him his salary, which hitherto they absolutely refuse affirming his desertion to be an actual avoidance. His own conduct and that of some of his friends has given but too just grounds for their aversion. Mr. Thos. Clark his chief agent here and then church warden stands now indicted by the grand jury as in the paper marked (c) as does also Mr. Vesey in the paper marked (D) I shall interpose in the latter, the former shall take its course. For further accounts of the affairs of this Province I must beg your Lordships patience till the next conveyance, having so much upon my hands at present of the affairs of the Jerseys. In the meantime I am with all due sense of honor and duty.

My Lords,
Your Lordships most obedient and most humble servant
Ro. Hunter

DOCUMENTARY HISTORY OF THE STATE OF NEW YORK,
Vol. III, by E. B. O'Callaghan, M. D., pages 435, 437, 439, 440, 441, 442 and 443.

ADDRESS FROM GOV. HUNTER'S FRIENDS TO THE BISHOP OF LONDON AGAINST THE REV. MR. VESEY, Circ. 1714.

My Lord
* * * * * * * * * *

My Lord, we most devoutly wish that we could say more of the progress of the Church in this city, that we could tell your L^dship that Her Majesty's Royal benefactions seconded by your L^dship's Right Reverend Predecessor and the care of some of our Excellent Governours had met with the desired success, it is true indeed My Lord (and we rejoice to say it) that we have here a thriving Church of the estabblished worship, that the same church enjoys a charter with ample priviledges, and that our minister is made happy in his function by a large stipend here and the enjoyment of a certaine ffarme called the Queen's ffarme which his Excellence Brigadier Hunter has consented the Church shall possess during his stay in this Government, out of which Mr. Vesey is allowed £26 p annum, which in all with perquisites is computed at £300 per annum.

My Lord, the reputation and interest of this church (on the conduct of whose members more particularly the dissenters have a very watchfull eye) being very dear to us and of the greatest importance to our present and future state, we humbly beg your L^dships leave to goe a little father in the account of it than its present condition, that your L^dship may judge whether at this day we had not better adhere strictly to our charter, and the antient rules by which till

very lately we have walked, than by altering our conduct introduce such innovations as may end in divisions fatal to us, and such as our posterity will find many difficultys to reconcile.

* * * * * * * * * *

My Lord, the regular observation of this Estabblishment has for many years kept the enemys of our Church out of its bosom, we would be understood My Lord that whilst the elections of Church Wardens and Vestrymen was made in presence of all the communicants it was impossible to bring such a majority of ill men into power as would entertain a thought prejudicial to the Church, but My Lord wee see that by turning ever so little aside from that path we are led into a Labyrinth of evil, for in a late instance our excellent rules and orders haveing been brok through and our charter slighted, a private choice has been made of such men into the vestry as we fear have already combined to doe the Church some signal injury.

My L^{d}, we must entreat your L^{d}ships patience while we relate the unprecedented manner of this choice. In 1713 a Vestry being called it was proposed to them by Mr Vesey that Mr Francis Philips who had deserted his cure at Stratford, and had done some things here which obliged him to abscond, should be favoured by them with a certificate of his good behaviour directed to the people of the Church of England at Philadelphia. This was disputed by many of the Vestry, and absolutely refused by some of the members who were men of estabblished reputation in this place, but however a majority at last prevailed for it: and at the same time Mr Vesey also prevailed with ye same majority to make a vote for electing among themselves (contrary to the rules of the Charter) New Members in the room of such as should not attend the meeting of the Vestry. And some time afterward finding that whilst those Gentlemen who opposed that certificate continued in the vestry it would be impossible to carry all his points there, secretly called as many of the Vestry together as he thought fit and told them that four absent Gentlemen (indeed not summond) declined to attend the service of the Church any longer, and therefore desired them to proceed to a new choice which was accordingly done in a Tavern, and four of the meanest of the people elected to supply a pretended Vacancy, which we fear will never be so well filled again.

My Lord we think ourselves much injured in this affair, and what is of the last consequence we think that the Church will soon feel the effects of this proceeding, if it has not already done so, for on the last Easter tuesday when the Communicants after service went up to the Altar according to custom to proceed to a new choice, after four candidates were put up for Church Wardens, the body of the Communicants divided themselves to either hand as they designed to vote, the Rector being within the Rails, and seeing us who are the subscribers all on one side said loudly, I hope you doe not intend to bring down the officers of the Garrison upon us. We reply (some few of us haveing the honour to serve Her Majesty here) that wee did not understand what he meant by the words before expressed, that we were Communicants in the same Church, and that we hoped he did not intend by the word You to distinguish Us as a separate congregation, for such a division would be fatal to the Church, and any thing that looked like a design that way would better become the mouth of an enemy than that of our Spiritual Pastor. After some other passionate and indiscreet behaviour shewed towards us by this unhappy Gentleman we proceeded to the choice, which (some few persons excepted) fell on the meanest sort, for My Lord, it seems the common people haveing seen four of their number chosen in a lawless opposition to four of the best rank in the late private election, were resolved to give this publick demonstration that they thought it high time, and this a fit opportunity to bring more of themselves into a share of power.

My Lord, we must not omit to acquaint your Lordship of the danger that may be apprehended from this choice, for if such mean persons are elected into the Vestry as can be bound either by art or interest, we have a great deal to fear from their weakness, the Dutch and French congregations being both very numerous compared with our very small one in this place, and if ever we should be so unhappy as to see the Church (which God forbid) under a Guardian less affectionate to her than Her present Majesty, we fear she might be in danger here from the unskillfulness or insincerity of those under whose direction her affairs may then happen to be, for though these foreign congregations live very quietly and charitably with us at present, yet we dare not trust too far to foreigners, having no instance of any favour from our own dissenters.

My Lord, wee also beg leave farther to tell your L^{d}ship that this expression of Mr Vesey at the Altar has a farther design in it as wee feare, and that in places of publick conversation he frequently takes occasion to separate us the Subscribers from himself and some others by revileing us with the name Schismaticks, which how unreasonable in its self, unjust to us, and pernicious it is to the peace and union of the Church we most humbly submit to your L^{d}ship on the following relation.

After Coll Fletcher had obtained of the Dutch to build themselves a Church in the town, he pulled down the old one in the Fort, and in its room built a chappel for the use of the Garrison and his own family, which Chappel after his removal from the Government, remained at some times neglected, and at others converted into a store house for fire wood, till the arrival of his Excellence Brigadier Hunter, who soon repaired and beautifyed it, and caused divine service to be constantly performed in it by the Reverend Mr. Sharpe, Chaplain to the fforces, which gave great satisfaction to many of the Church of England, and especially such who wanted accommodation in Trinity Church (where Pews are not to be purchased but at a very high rate) and were forced sometimes to absent themselves from divine Service, which now they need not doe, haveing now a place of worship to resort unto where all degrees are seated without price or reward. My Lord, the greater part of us have frequently received the L^{ds} Supper with our present Governour in that chappel as well as in the church, and shall continue to doe so (though this be the Schism of which we are accused by Mr. Vesey) til we are convinced of our error by better arguments than any he has yet produced.

My Lord, though we are not versed in controversy, yet some of us have desired to know of him whether the Unity of the Church consists in the Identity of place; whether those who serve God in a place consecrated to divine service under the same form and discipline prescribed by the Established Church of England, and receive the Communion in the same manner, from the same Ministers, and under the same Bishops as by her we are directed, can be called Schismaticks because we sometimes goe to this chappel where we are sure to have a discourse equally edifying, and in that alone differing from him.

My Lord he has been told that there is the Parish Church of St James's and there is also a chappel of Her Majesty in the same Parish, at both which the same Reverend Prelates

have often administered the holy sacrament, and the same pious persons have frequently communicated, yet wee never heard of any so uncharitable as to use the word Schism on such occasion.

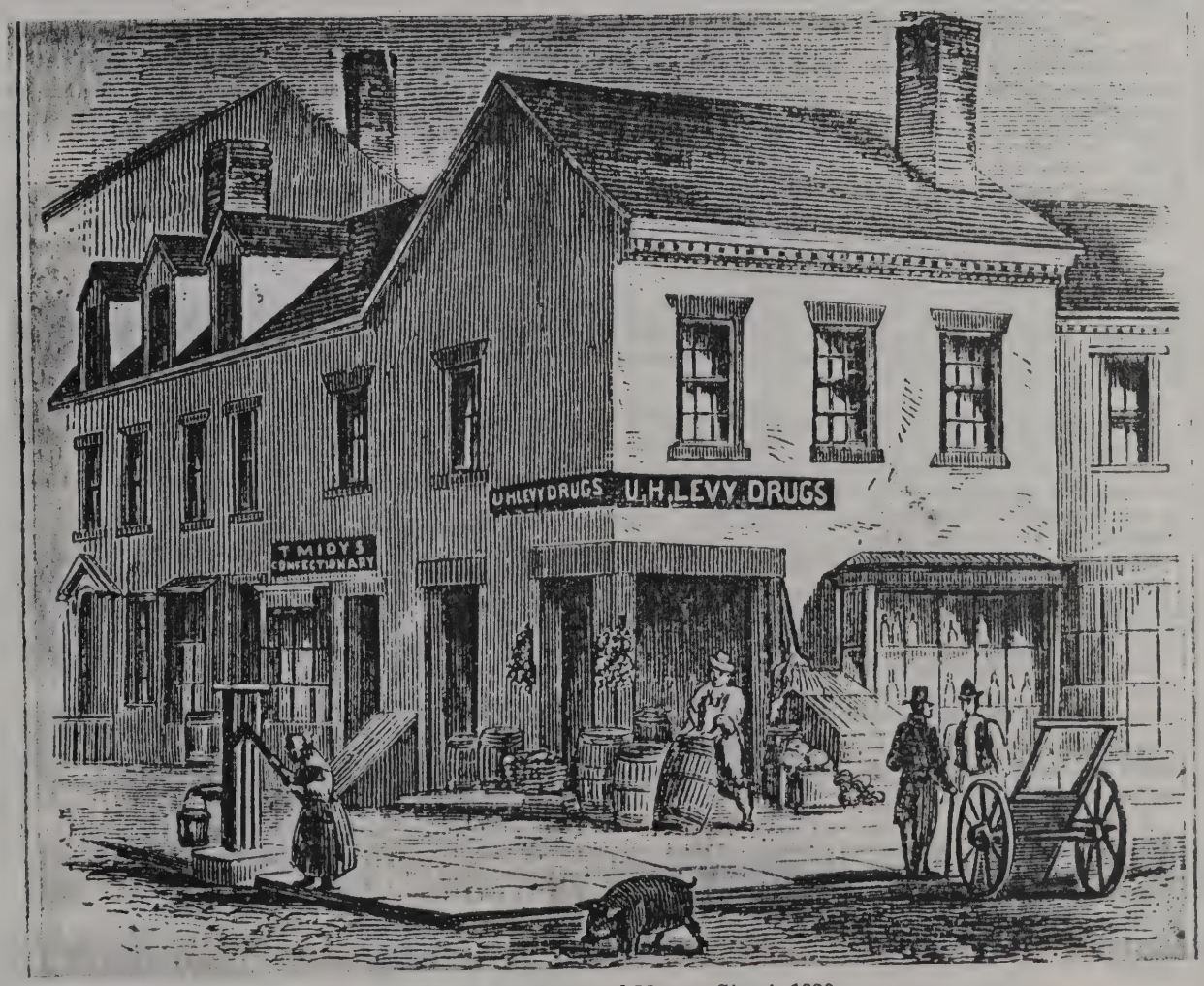
My Lord, the unhappy temper of the unfortunate man, if it does not meet with some restraint from your L^dships charity and goodness towards this infant Church will ruin the promising beginnings which are already made towards its growth and establishment. For the spreading of such false doctrine as what we have repeated to your L^dship, and what is daily inforced to ignorant people here, gives great joy to those who would gladly see us as realy Schismaticks as we are reported to be.

My Lord, it were no difficult matter for us who are thus calumniated to find proper and severe yet legal remedys against this Gentleman, and if wee were so inclined 'twere not impossible to make him very uneasy on the fore mentioned breach of the Church's charter, but, my Lord, we thank God (who has inspired us with a more Xtian temper than so to doe the work of our Adversary) that your Lordship can and we doubt not will use more effectual methods for his and our preservation; and indeed, My Lord our condition is deplorable, if while your L^dship is with so great honour and success cultivating the arts of peace throughout all the world, our poor Church alone should want the blessing of your Lordship's healing hand.

The state of the Church in General in this Province and of this place in particular being such as is before described, We were always of opinion that a steady adherence to its discipline and worship, a strict union and brotherly affection among its members, and a constant conformity to the rules and directions of our Charter, were the best means to maintain our footing, and the most likely to Enlarge the Borders of the Church and disappoint the designs of our Enemys, being situated in the midst of great numbers of them. Wee submitt to yor Lordships Judgement the consequences of Mr. Vesey's Conduct in proclaimeing[1] in the ears of a dissenting world such as this is that the fitting up of the Queen's Chappel in a decent manner which before was a Bear yard for the worship of Almighty God according to the usage of the Church of England was a Schism; how proper it is for any man that has the interest of our Church at heart to break through our Constitution, and by the help of a Vestry chiefly composed of the meaner sort of people (for what other purposes God knows) trample upon our Rights.

[1]Originally written—"If we have any false brethren, any private Enemies to our peace and Holy Church it is much to be lamented; we know we have a very imprudent pastor, for would any man that is otherwise proclaim"—

An 1820 New York Skyscraper!



Corner of Broadway and Murray Street, 1820.

Signature to Grant

Significant as it may seem, the record in this case, at page 646, discloses there was some issue in regard to this execution of this grant:

> "The complainants counsel objected to this evidence because the letters patent did not appear to have been signed by Lord Cornbury, and only by George Clarke, deputy secretary."

Note the learned Vice-Chancellor's discussion of this question at pages 734-5-6:

The complainants having thus made the execution of the grant from Queen Anne a part of their claim, it seems wholly needless to pursue the inquiry. The defendants, nevertheless, introduced the original letters patent, under the great seal of the province of New York, signed by the secretary, "By His Excellency's command," and recorded among the patents, in the secretary's office. An objection was made to the letters patent, because they do not bear the signature of the governor, Lord Cornbury; and it was urged that an agent, executing a deed for [735] his principal, must always sign as well as seal the deed. The last argument proves too much, because an agent thus executing must sign the principal's name, adding his own as attorney. Therefore, to have made the execution of this patent valid in form as the deed of Queen Anne, according to the complainant's argument, it should have been signed, "Anne, by her governor or attorney, Cornbury" and, moreover, should have had her own seal, and not the seal of the colony, appended to it.

The sovereigns of England never granted lands by deed. Their alienations were always of a higher character, being known in the law as alienations by matter of record. The grants were recorded in the proper office, and the great seal was affixed to the transcript, as evidence of the grant to the public. The letters of gift or transfer were thereby made patent, or open to the world. In practice whatever rescript or authority for letters patent emanated from the sovereign personally, whether under his sign-manual or by [736] writ of privy seal; it formed the warrant for the officer holding the great seal to affix the same to the letters patent, and was retained as his authority for the act.

It is very evident that grants of land in the colony, pursuing the forms used at home, were frequently, if not usually, made without the governor's signature and in the precise form of attestation that is used in the letters patent of 1705 to Trinity Church.

How can you reconcile the above statements of the Vice-Chancellor in his report of this case? You have first his statement that George Clarke signed the grant as Deputy Secretary and his later statement that the grant was signed by the Secretary at "His Excellency's command." Which statement is true? Can both be true? Was there a "Deputy Secretary" of the Province at that time? The answer to this question is contained in the attached letter of September 8th, 1915, from the Assistant Archivist, of the New York State Library.

This leads us, naturally, to the question as to whether there was any signature attached to this grant by either a secretary or a deputy secretary.*

During my disbarment trial, I became anxious to ascertain if there was, in fact, any signature to the grant, and if so, was it decipherable.

It was then, upon my request, the referee made an order permitting the photographing of this grant and other papers. To avail myself of this privilege I visited the offices of Trinity Corporation, in company with an expert in handwriting, ink and palimpsests, preliminary to making arrangements for the photographing of the different documents.*

To gain a real appreciation as to how near I came to securing those photographs, including the Queen Anne Grant, as ordered by the court, let me quote from the papers on file in my disbarment action:

October 21st, 1916, I wrote to Mr. Jackson, asking, in view of his suggestion that we have the same photographer, I would appreciate it if he would make an early appointment.

On October 23rd, 1916, Mr. Jackson answered and said, that he was endeavoring to arrange with Mr. Camman to have a photograph made of all the papers which were produced during the course of the examination, and he stated further that it included those of which they undertook to furnish copies as well as those which I was to photograph; that he could probably have photographic reproductions made, but at the end of his letter he stated

> "I will let you know further whether I am successful in this proposed arrangement."

I answered this letter Oct. 25th, 1916, and told him I would await his further advices, and I did wait. Not hearing from him, however, I wrote to him October 30th, and asked him to advise me in the matter. On November 4th, I received a letter he wrote October 31st, advising me that the exhibits which Trinity was to furnish were with the Referee and subject to my inspection, but the copies which the Referee ordered they were to furnish me were not mentioned, nor were they ever furnished.

On November 4th, Jackson wrote and said that the exhibits which were with the Referee included all the papers and documents which were produced by Mr. Camman, and which either they or I were to furnish, and that I could inspect them at the Referee's office.

I went to the office of Trinity to make arrangements to photograph the records I had been ordered and allowed to make by the Referee, including the Queen Anne grant, and was informed that Mr. Nash who had charge of the matter, had the photographs made.

There were fifteen exhibits which I was ordered to photograph, including the Queen Anne grant. On November 13th, after finding that Mr. Jackson had proceeded with his photographs without advising me, as he had promised, I made arrangements with Mr. A. J. Drummond of 50 Fulton Street this city to look over the work for me, giving him a list of the photographs which had been ordered by the Referee, and told him to see Mr. Camman, personally, if he could. I received an answer from Mr. Drummond, dated November 14th, 1916, in which he stated that Mr. Camman would not be at the Corporation office until Friday, and that he was unable to see the various documents that I mentioned, so could not give me a figure. I answered this November 15th, and told him I would take up the matter, and write him further.

I wrote to Mr. Camman, November 15th, 1916, and sent it by registered mail, explaining the situation to him, and asked him to communicate with me or with Mr. Drummond, for the purpose of making arrangements for the taking of the photographs, and called to his mind the order of the Referee in this regard. In answer to this I received a letter from Mr. Camman, on Trinity Church Corporation letter head, stating:

> "Your letter of the 15th inst. is received. We have had photographs made of all the papers as directed by the Referee, and have supplied copies of the same

to whom these presents shall come, or may

ngland as by law established, were (by an
to the Rector and Inhabitants of the City
name of the Rector and Inhabitants of the
te in the law to sue or to be sued in any
ch there called Trinity Church, burying-
that the said Rector and Inhabitants, and
e, take, receive, acquire, and purchase and
said lands, tenements and hereditaments,
not exceeding five hundred pounds yearly
by the said recited act more at length it

s by law established, by their petition to our
our province of New-York and territories
nto them and their successors for the use
Duke's Farme, and the King's Farme, now
atsoever thereunto belonging as the same
tuate, lying and being on the Island Man-
nd partly by the Swamp, and on the West
rd of Trinity Church aforesaid, commonly
w water marke upon Hudson River on the
ng to grant; know ye that of our especiall
for ourself, our heirs, and successors, we
e Church of England as by law established
e same are hereinbefore particularly set
n as part parcell or member thereof as the
y former tenant or tenants, and all rents,
rwoods, trees, timber which now are stand-
of, and all feedings, pastures, meadows,
hawking, hunting, mines and minerals, and
several closes, peeces and parcells of land
all gold and silver mines.)
confirmed or meant, mentioned, or intended
r and Inhabitants of the City of New-York
s and successors in free and common socage
g therefore yearly and every year unto us,
e feast of the Nativity of our blessed Saviour
nands whatsoever, Provided always, and our
w-York, shall at any time hereafter cease or
York aforesaid, which is now paid out of
t dwelling of the Rector of the said Church
gland as by law established, and their suc-
ses, pay and discharge the same for and until
the time being, any thing herein before in
letters to be made pattents, and the seal
office of our Province. Witness our Right
oresaid and territory depending thereon in
ember, in the fourth year of our reigne anno

By His Excellen

*The signature
s now indistinct by reas
as appears from Coloni
above Grant.

* Appended to

Signature to Grant

Significant as it may seem, the record in this case, at page 646, discloses there was some issue in regard to this execution of this grant:

> "The complainants counsel objected to this evidence because the letters patent did not appear to have been signed by Lord Cornbury, and only by George Clarke, deputy secretary."

Note the learned Vice-Chancellor's discussion of this question at pages 734-5-6:

The complainants having thus made the execution of the grant from Queen Anne a part of their claim, it seems wholly needless to pursue the inquiry. The defendants, nevertheless, introduced the original letters patent, under the great seal of the province of New York, signed by the secretary, "By His Excellency's command," and recorded among the patents, in the secretary's office. An objection was made to the letters patent, because they do not bear the signature of the governor, Lord Cornbury; and it was urged that an agent, executing a deed for [735] his principal, must always sign as well as seal the deed. The last argument proves too much, because an agent thus executing must sign the principal's name, adding his own as attorney. Therefore, to have made the execution of this patent valid in form as the deed of Queen Anne, according to the complainant's argument, it should have been signed, "Anne, by her governor or attorney, Cornbury" and, moreover, should have had her own seal, and not the seal of the colony, appended to it.

The sovereigns of England never granted lands by deed. Their alienations were always of a higher character, being known in the law as alienations by matter of record. The grants were recorded in the proper office, and the great seal was affixed to the transcript, as evidence of the grant to the public. The letters of gift or transfer were thereby made patent, or open to the world. In practice whatever rescript or authority for letters patent emanated from the sovereign personally, whether under his sign-manual or by [736] writ of privy seal; it formed the warrant for the officer holding the great seal to affix the same to the letters patent, and was retained as his authority for the act.

It is very evident that grants of land in the colony, pursuing the forms used at home, were frequently, if not usually, made without the governor's signature and in the precise form of attestation that is used in the letters patent of 1705 to Trinity Church.

How can you reconcile the above statements of the Vice-Chancellor in his report of this case? You have first his statement that George Clarke signed the grant as Deputy Secretary and his later statement that the grant was signed by the Secretary at "His Excellency's command." Which statement is true? Can both be true? Was there a "Deputy Secretary" of the Province at that time? The answer to this question is contained in the attached letter of September 8th, 1915, from the Assistant Archivist, of the New York State Library.

This leads us, naturally, to the question as to whether there was any signature attached to this grant by either a secretary or a deputy secretary.*

During my disbarment trial, I became anxious to ascertain if there was, in fact, any signature to the grant, and if so, was it decipherable.

It was then, upon my request, the referee made an order permitting the photographing of this grant and other papers. To avail myself of this privilege I visited the offices of Trinity Corporation, in company with an expert in handwriting, ink and palimpsests, preliminary to making arrangements for the photographing of the different documents.*

To gain a real appreciation as to how near I came to securing those photographs, including the Queen Anne Grant, as ordered by the court, let me quote from the papers on file in my disbarment action:

October 21st, 1916, I wrote to Mr. Jackson, asking, in view of his suggestion that we have the same photographer, I would appreciate it if he would make an early appointment.

On October 23rd, 1916, Mr. Jackson answered and said, that he was endeavoring to arrange with Mr. Camman to have a photograph made of all the papers which were produced during the course of the examination, and he stated further that it included those of which they undertook to furnish copies as well as those which I was to photograph; that he could probably have photographic reproductions made, but at the end of his letter he stated

> "I will let you know further whether I am successful in this proposed arrangement."

I answered this letter Oct. 25th, 1916, and told him I would await his further advices, and I did wait. Not hearing from him, however, I wrote to him October 30th, and asked him to advise me in the matter. On November 4th, I received a letter he wrote October 31st, advising me that the exhibits which Trinity was to furnish were with the Referee and subject to my inspection, but the copies which the Referee ordered they were to furnish me were not mentioned, nor were they ever furnished.

On November 4th, Jackson wrote and said that the exhibits which were with the Referee included all the papers and documents which were produced by Mr. Camman, and which either they or I were to furnish, and that I could inspect them at the Referee's office.

I went to the office of Trinity to make arrangements to photograph the records I had been ordered and allowed to make by the Referee, including the Queen Anne grant, and was informed that Mr. Nash who had charge of the matter, had the photographs made.

There were fifteen exhibits which I was ordered to photograph, including the Queen Anne grant. On November 13th, after finding that Mr. Jackson had proceeded with his photographs without advising me, as he had promised, I made arrangements with Mr. A. J. Drummond of 50 Fulton Street this city to look over the work for me, giving him a list of the photographs which had been ordered by the Referee, and told him to see Mr. Camman, personally, if he could. I received an answer from Mr. Drummond, dated November 14th, 1916, in which he stated that Mr. Camman would not be at the Corporation office until Friday, and that he was unable to see the various documents that I mentioned, so could not give me a figure. I answered this November 15th, and told him I would take up the matter, and write him further.

I wrote to Mr. Camman, November 15th, 1916, and sent it by registered mail, explaining the situation to him, and asked him to communicate with me or with Mr. Drummond, for the purpose of making arrangements for the taking of the photographs, and called to his mind the order of the Referee in this regard. In answer to this I received a letter from Mr. Camman, on Trinity Church Corporation letter head, stating:

> "Your letter of the 15th inst. is received. We have had photographs made of all the papers as directed by the Referee, and have supplied copies of the same

ANNE, by the grace of God, of England, Scotland, France and Ireland, Queen, Defender of the Faith, &c., To all to whom these presents shall come, or may concern, send greeting:

Whereas, the Rector and Inhabitants of the City of New-York, in communion of the Church of England as by law established, were (by an act of Assembly made in the third year of our reigne, entitled An act granting sundry privileges and powers to the Rector and Inhabitants of the City of New-York, of the communion of the Church of England as by the law established,) incorporated by the name of the Rector and Inhabitants of the City of New-York in communion of the Church of England as by law established, and made persons corporate in the law to sue or to be sued in any action or matter whatsoever; and by that name they and their successors should hold and enjoy the Church there called Trinity Church, burying-place and lands thereunto belonging, by whatever name or names the same were purchased and had; and that the said Rector and Inhabitants, and their successors by the same name from thenceforward should have good rights and lawful authority to have, take, receive, acquire, and purchase and use and enjoy lands, tenements and hereditaments, goods and chattels, and to demise, lease and improve the said lands, tenements and hereditaments, and to use and improve such goods and chattels to the benefit of the said Church and other pious uses, not exceeding five hundred pounds yearly rents or incomes, with diverse other privileges and powers to them the said Rector and Inhabitants, and their successors, as by the said recited act more at length it doth and may appear.

And whereas the said Rector and Inhabitants of the said City of New-York, in communion of the Church of England as by law established, by their petition to our right trusty and well beloved cousin, Edward Viscount Cornbury, our Captain General and Governor in Chiefe in and over our province of New-York and territories thereon depending in America, and Vice Admiral of the same, have humbly prayed that wee would grant and confirm unto them and their successors for the use of the said Church, all those our severall closes, peeces and parcells of land, meadows and pastures formerlly called the Duke's Farme, and the King's Farme, now known by the name of the Queen's Farme, with all and singular ye fences, inclosures, improvements and appurtenances whatsoever thereunto belonging as the same are now in the occupation of and enjoyed by George Ryerse of the City of New-York, yeoman, or by any former tenant, scituate, lying and being on the Island Manhattans in the city of New-York aforesaid, and bounded on the East, partly by the Broadway, partly by the Common, and partly by the Swamp, and on the West by Hudson's River, and also all that our piece or parcell of ground, scituate and being on the south side of the churchyard of Trinity Church aforesaid, commonly called and known by the name of the Queen's Garden, fronting to the said Broadway on the East, and extending to low water marke upon Hudson River on the West, all which said premises are now lett at the yearly rent of thirty pounds, which reasonable request wee being willing to grant; know ye that of our especiall grace, certaine knowledge, and meer motion, we have given, granted, ratified and confirmed in and by these presents, for ourself, our heirs, and successors, we do give, grant, rattify and confirm unto the said Rector and Inhabitants of the City of New-York in communion of the Church of England as by law established and their successors all and singular the said farme lands, tenements and hereditaments hereinbefore mentioned, as the same are hereinbefore particularly set forth, with the appurtenances and every part and parcell thereof or thereunto belonging or accepted, reputed, or taken as part parcell or member thereof as the same now are held, occupied and enjoyed by the said George Ryerse, or have been hertofore occupied and enjoyed by any former tenant or tenants, and all rents, arrearages of rents, issues and profits thereof, and of every or any part or parcell thereof together with all woods, underwoods, trees, timber which now are standing and growing, or which hereafter shall stand and grow in and upon the premises hereby granted, or any part thereof, and all feedings, pastures, meadows, marshes, swamps, ponds, pooles, waters, watercourses, rivers, rivolets, runs and streams of water brooks, fishing, fowling, hawking, hunting, mines and minerals, and all and singular the ways, passages, easements, profits, commodities and appurtenances whatsoever to the said farm, several closes, peeces and parcells of land and premises belonging or in any wise of right appertaining (except and always reserved out of this, our present grant all gold and silver mines.)

To have and to hold the said farme, severall closes, pieces and parcells of land and premises hereinbefore granted and confirmed or meant, mentioned, or intended to be hereby granted and confirmed with their and every of their appurtenances (except before excepted) unto the said Rector and Inhabitants of the City of New-York in communion with the Church of England as by law established, and their successors forever. To be holden of us, our heirs and successors in free and common socage as of our Manor of East Greenwich in our County of Kent, within our kingdom of England, yielding, rendering, and paying therefore yearly and every year unto us, our heirs and successors at our City of New-York aforesaid to our Collector and Receiver General there for the time being, on the feast of the Nativity of our blessed Saviour the yearly rent of three shillings current money of New-York in lieu and stead of all other rents, services, dues, duties and demands whatsoever, Provided always, and our present grant is upon this condition that if our Capt. Generall and Govr. in Chief for the time being of our said Province of New-York, shall at any time hereafter cease or forbear the yearly payment of six and twenty pounds for the house rent of the Rector or Minister of Trinity Church of New-York aforesaid, which is now paid out of our revenue in the said province, and at such time, no suitable house shall be erected and built for the proper use and convenient dwelling of the Rector of the said Church for the time being, yt then the said Rector and Inhabitants of the said City of New-York, in Communion of the Church of England as by law established, and their successors shall from thenceforth yearly, and every year, out of the rents and profits of the hereinbefore granted lands and premises, pay and discharge the same for and until such suitable house shall be erected and built for the proper use and convenient dwelling of the Rector of the said Church for the time being, any thing herein before in this our grant conteined to the contrary thereof in any wise notwithstanding. In testimony whereof we have caused these our letters to be made pattents, and the seal of our said province of New-York to our said letters pattent to be affixed and the same to be recorded in the Secretary's Office of our Province. Witness our Right trusty and well beloved cousin Edward Viscount Cornbury, Capt. Generall and Govr. in Chief in and over our province aforesaid and territory depending thereon in America and Vice Admirall of the same &c. in Council at our fort in New-York aforesaid the three and twentieth day of November, in the fourth year of our reigne anno Dm. 1705.

By His Excellenceye's Command.

X X

.....D Sey *

*The signature on the original Grant of the person signing it as "by his Excellenceye's Command" as "D Sey" s now indistinct by reason of age, although the fact that a signature is appended is very clearly apparent. At that date, as appears from Colonial documents, William Anderson was Deputy Secretary under Lord Cornbury, described in the above Grant.

* Appended to the original Grant is the Great Seal of the Province of New York of 1705.

to the Referee. We are advised that this is all that is necessary for us to do."

This letter is signed by H. H. Camman, Comptroller.

This circumstance is related for the purpose of directing your attention to the general conditions surrounding this matter.

This referee made an order, to which both the attorney and the Comptroller for Trinity Church acquiesced. Thus, eliminating all question as to whether he would have made such an order had they protested, you have the court permitting Trinity Church, and its attorneys, to flount in his face their refusal to comply with his order to permit the photographing of this grant. The record shows the referee made the order, and compliance refused. No photograph was either made or furnished me; nor was I permitted to make such photographs.

How long do you think such a condition could have existed had the situation been reversed? Not everyone has sufficient power and influence to disobey the mandates of the courts. Is this a fair picture of the conditions in our courts? Have we come to a pass where the position of public officials is so dependable upon the will and pleasure of big interests, that all consideration is given to the one side of litigation coming before them?

Would such conditions convince you I was justified in feeling I was convicted before even the hearings began; that the trial of the issues was merely to allow of sufficient publicity to be given my punishment for the agrandisement of this religious corporation?*

Do you not think the Court's self-respect should have compelled him to force a compliance with his orders on the part of Trinity Church? Has any man, who shows himself so subservient to big interests, the right to sit in judgment upon matters involving whether or no another respects the law?

In any event, upon my visit to the offices of Trinity Corporation, I was made happy with the presentation of a printed copy of this Queen Anne grant, at the hands of the said Comptroller, H. H. Camman, a facsimile of which is here inserted. (Plate ten.)

In publishing the receipt of this printed copy I am mindful of the hazard I run of having it repudiated, much as the action of the celebrated committee was repudiated. However, with this printed copy the picture is somewhat enlarged as it is particularly pertinent to this question as to whether there was any signature to this grant.

We now have the Vice-Chancellor saying that the grant was signed by George Clarke, as Deputy Secretary, and later that the grant was signed by "The Secretary, at his Excellency's command," and the printed copy furnished the writer by H. H. Camman, the Comptroller of Trinity Church, stating that the grant was signed by

.....D.Scy*

*"The signature on the original grant of the person signing it as "by his Excellenceye's Command" as "D.Scy" is now indistinct by reason of age although the fact that a signature is appended is very clearly apparent. At that date as appears from Colonial Documents William Anderson was Deputy Secretary under Lord Cornbury described in the above grant."

We turn for accurate, authentic, reliable information from the office of the Secretary of State, who became custodian of the original records of the Secretary of the Province. We are told by the Archivist that one George Clarke was secretary from 1703 to 1720. Certainly George Clarke, a member of Trinity Church, now resting peacefully with other celebrated men of his time, in Trinity Churchyard, can be relied upon to have made in his official duty as secretary of the Province a true, accurate, reliable and dependable copy of this grant. (Plate nine).

A facsimile copy of this record in the office of the Secretary of State is No. four of the appendix.

After having examined the grant, and easily deciphering the name of the person who had signed, and remembering the statements in the printed case as to the signature, I could not understand why Trinity Church was publishing and distributing that printed copy, claiming the signature was indistinct by reason of age, and conjecturing that it was William Anderson, stating he was deputy secretary at the time.*

Last, but not least, let us mark that this case was decided in 1847. In the Rev. William Berrian's historical sketch of Trinity Church, published in the self-same year, 1847, we find the following:

In 1705, in the reign of Queen Ann, a grant was made to the corporation of Trinity Church by deed patent, signed by Lord Cornbury, who was at that time governor of the province, of a tract of land then called Queen's farm, now the Church farm, lying on the west side of Mannahata Island, and extending from St. Paul's Chapel northwardly along the river to Skinner Road, now Christopher Street. This property, which was then literally what it was called, a farm, and which was comparatively of little value, has since become a compact part of the City. Even now, however, (this book was published in 1847) from a large proportion of it having been put out on long leases, at mere nominal rents, it is much less productive than has been generally supposed.

Disregarding the court's argument over the question of how an attorney or agent should execute a paper, as wholly irrelevant to the point as to who had the authority to sign and execute this grant, we reach the final climax of this chapter on the signatory.

It seems to me somewhat of a muddle, for on the one hand you have the certified copy from the office of the Secretary of the State of New York, establishing that there was no signature to this grant, which records are presumed to be correct, and should have been scrupulously correct in this instance with one of Trinity's Vestrymen as secretary in charge, and on the other hand the head of this church, its Rector, stating that this grant was signed by Lord Cornbury, and publishing this statement in the self-same year that the Vice-Chancellor flung at him the fact that the grant was not signed by Lord Cornbury, but by George Clarke as Deputy Secretary in one instance, and in another that the secretary signed "At his Excellency's command."

In these circumstances, it is hard to tell whether the Rector is telling the truth, or the Vice-Chancellor, and equally as hard to discern whether Clarke, as Secretary of the Province, made a true and correct record of this grant, or what did happen to it in after years.

One of our favorite legal jokes as to signature is, a Notary called upon Rastus to sign his name in a particular place, whereupon Rastus answered "Ah doesn't write my name suh. I has no time for dem triflin' details o' business. Ah allus dictates ma name, suh." It is quite probable that the name was dictated, that the amanuensis forgot to transcribe, and the signatory did not have the time to attend to the trifling details of signature to such an important paper.

With respect to the Court's observations, that grants of land in the colony were usually made without the Governor's signature, all that long desertation was unnecessary, be-

Plate Nine

THE UNIVERSITY OF THE STATE OF NEW YORK
ALBANY

NEW YORK STATE LIBRARY
JAMES I. WYER, JR. DIRECTOR

MANUSCRIPTS SECTION
A. J. F. VAN LAER, ARCHIVIST
PETER NELSON, ASSISTANT ARCHIVIST

8 September 1915

Mr W.T.Gridley
250 West 91st Street
New York City

Dear Sir:-

Your letter of the 19th to the Secretary of State has already been answered by Mr Tolman but I find that he laid it aside for further answer by myself on return from vacation. An examination of the calendars of the "Colonial Manuscripts" and of the "Council Minutes" and other sources shows that during the year 1705 George Clarke was secretary of the Province, ~~and~~ he was sworn in on the 30th of July 1703, and was secretary for a number of years. I find nothing in any of the records referred to above to show that there was any deputy secretary at the time referred to, nor do I find any record of any other George Clarke connected with the Secretary's office. About 40 years later George Clarke Jr was secretary of the Province, and at that time George Clarke was lieutenant-governor.

SEP 10 1915

Yours very truly

Peter Nelson
Assistant Archivist

PN/HRS

E

Ig One of ye Gentlemen of his Maties
R. Highnes James Duke of Yorke & Albany
whom these Presents shall come sendeth —

ccu in ye tenure or occupacon of Daniell Jans
the East side where it abutts on ye Lott of Christian
ay in Breadth one hundred foot, on ye West side
Jans Jonckers, where it is in Breadth & length
of ye Dorpe or Village, haveing on ye West side Symon
path into ye Wood, in breadth foure & twenty Rod & a
haveing also ye Comon Way, being in Breadth and in
aniell Jans van Antwerpen in his Possession and

Ratifye, Confirme & Graunt unto Daniel Jans van
ses, wth all & singular ye Appertenances To have
ye said Daniell Jans van Antwerpen his Heires and
ans van Antwerpen his Heires & Assignes forever
s as nowe are, or hereafter shall be Constituted &
dence of his Royall Highness his Heyres, and
Seale of ye Province at Forte James in
23^d yeare of his Maties Reigne, Anno q3

Francis Lovelace

Plate Nine

THE UNIVERSITY OF THE STATE OF NEW YORK
ALBANY

NEW YORK STATE LIBRARY
JAMES I. WYER, JR. DIRECTOR

MANUSCRIPTS SECTION
A. J. F. VAN LAER, ARCHIVIST
PETER NELSON, ASSISTANT ARCHIVIST

8 September 1915

Mr W.T.Gridley
250 West 91st Street
New York City

Dear Sir:-

Your letter of the 19th to the Secretary of State has already been answered by Mr Tolman but I find that he laid it aside for further answer by myself on return from vacation. An examination of the calendars of the "Colonial Manuscripts" and of the "Council Minutes" and other sources shows that during the year 1705 George Clarke was secretary of the Province; ~~and~~ he was sworn in on the 30th of July 1703, and was secretary for a number of years. I find nothing in any of the records referred to above to show that there was any deputy secretary at the time referred to, nor do I find any record of any other George Clarke connected with the Secretary's office. About 40 years later George Clarke Jr was secretary of the Province, and at that time George Clarke was lieutenant-governor.

SEP 10 1915

Yours very truly

Peter Nelson
Assistant Archivist

PN/HRS

Francis Lovelace Esq

One of ye Gentlemen of his Maties Honble Privy Council, and Governor Gen^ll under his R. Highnes James Duke of Yorke & Albany &c of all his Territoryes in America; To all to whom these Presents shall come sendeth Greeting &c

Whereas there is a certaine Lott of Land at Kuerkechtide now in ye tenure or occupacon of Daniell Jans van Antwerpe as his proper Right, containing in length on the East side where it abutts on ye Lott of Christian Christians two hundred foot, & on ye South side by ye High-way in Breadth one hundred foot, on ye West side likewise by ye High-way, & on ye North side abuting on Jan Jans Jonckers, where it is in Breadth & length as before; As also a Plantacon in ye Wood Land on ye East side of ye Dorpe or Village having on ye West side Symon Symons Groot in length fourtynine Rod on ye North side ye Common path into ye Wood, in breadth foure & twenty Rod & a half, on ye East side it stretcheth into ye Wood, & on ye south-side, having also ye Common Way, being in Breadth and in length as before. Now for a confirmacon unto him ye said Daniell Jans van Antwerpen in his Possession and Enjoyment of ye premises Know ye that I

have Ratified, Confirmed, & Granted, & by these Presents doe Ratifye, Confirme & Graunt unto Daniel Jans van Antwerpen the aforerecited Lott of Ground, Plantacon & Premisses, wth all & singular ye Appertenances To have & to hold the said Lott of Ground, Plantacon & Premisses unto ye said Daniell Jans van Antwerpen his Heires and Assignes, unto ye proper use & behoofe of the said Daniell Jans van Antwerpen his Heires & Assignes forever, Rendring and paying such Duties and Acknowledgments as now are, or hereafter shall be Constituted & Establisht by the Lawes of this Government, under ye Obedience of his Royall Highness his Heyres and Successors. Given under my Hand, & Sealed with the Seale of ye Province at Forte James in New York, the twenty seaventh day of Aprill, in the 23^d yeare of his Maties Reigne, Anno q^ni Dñi 1671.

Francis Lovelace

Recorded by Ord^r of the Governor.

Mathias Nicolls Sec^r

cause, without doubt, everyone at that time was familiar with the custom that all such grants were usually signed by the governor, and the colonial seal attached.

Concluding, it would seem to me, in view of the attestation clause:

> "In testimony whereof we have caused these letters to be made pattents, and the seal of our said province of New York to our said letters pattent to be affixed and the same to be recorded in the Secretary's office of our Province. WITNESS our Right trusty and well beloved cousin Edward Viscount Cornbury, Capt. Generall and Govr. in Chief in and over our province aforesaid and territory depending thereon in America and Vice Admirall of the same &c in Council at our Fort in New York the three and twentieth day of November in the fourth year of our reigne anno Dm. 1705."

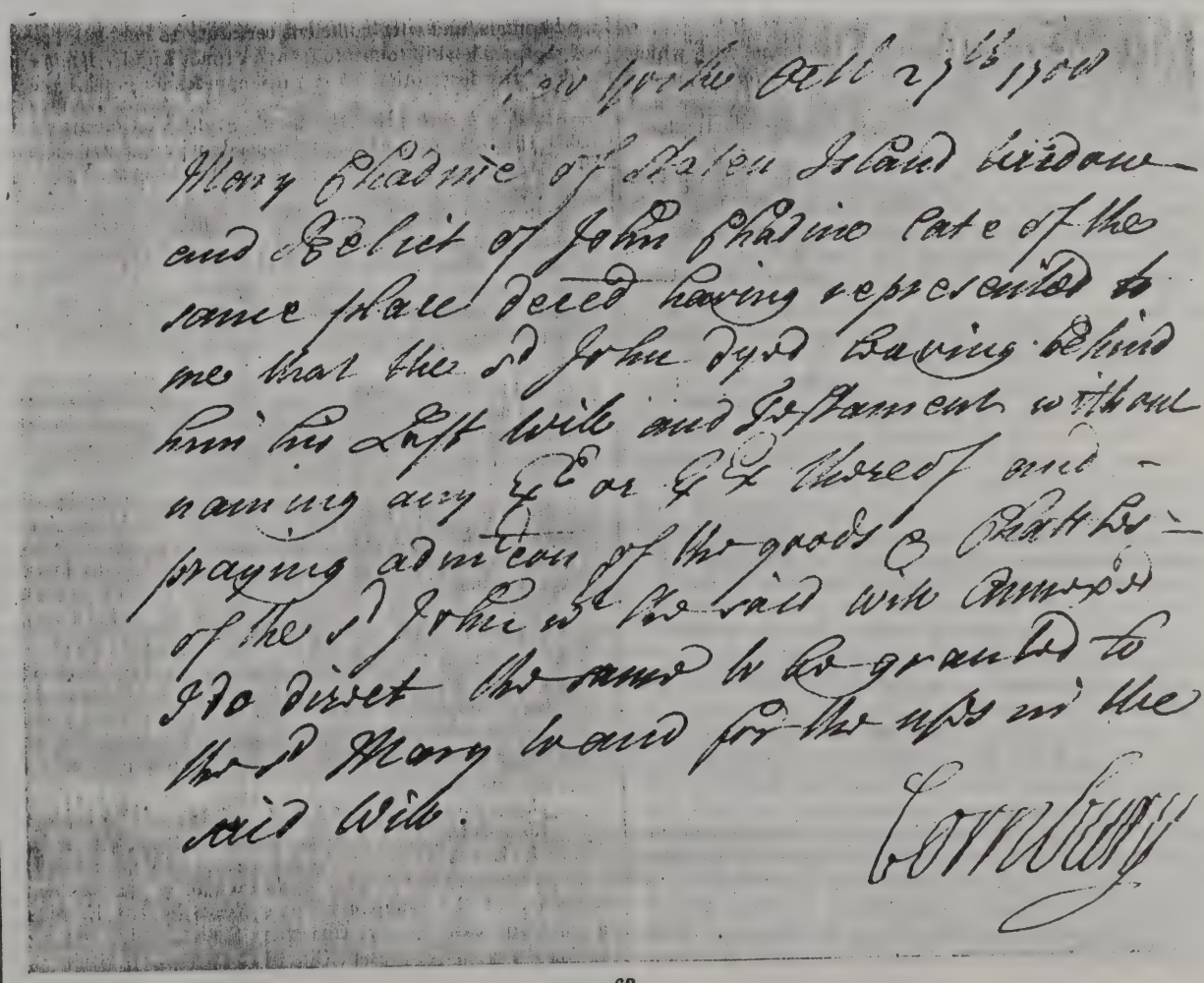
that this grant was passed "in council", and that the minutes of the Colonial Council should disclose the action taken by them; that this record should have been produced to have justified recognition of the unsigned grant on the part of the Court. No such record could be produced.

In this connection I have several times had an opportunity to examine parchments signed by Cornbury himself, as well as other governors. For instance, the confirmation grant to the children and heirs of Anneke Jans Bogardus was signed by the first English Governor, Richard Nicolls.[3] The attached reproduced parchment was signed by the second English Governor, Lovelace, and the prior Trinity lease of 1697 was signed by Governor Fletcher.[3] The first charter of the City of New York of 1686 was signed by Governor Dongan. But independent of whether Cornbury signed it or did not sign it, the question is, whether anyone signed it at the time, because of the difficulty of ignoring the sanctity that must be given to the public records in the Secretary of State's office.

It has, however, happened, that directors have directed presidents and secretaries to sign deeds, but this has no relevancy to the question, for, if we are to give credence to the record in the office of the Secretary of State, all that was necessary in these primitive times, when all men were honest, was for someone to be in a position to put his hands on the colonial seal, draft his grant, and attach the seal thereto, and at sometime make a record, which could lie dormant, until all men then living were in dust and ashes, when claim could be made to the universe.

All this, however, is foreign to the subject matter of this volume, the little Bogardus Farm, the northern neighbor, who have never been interested, and who, so far as I have been able to learn, never have been concerned in what was in truth and in fact the original Dutch West India Company's Farm-Duke-Kings-Queens-and ultimately the Church Farm proper, though it may be well to relate these very strange events, which are a matter of history.

A Cornbury Signature.



Description.

Looking first to the grant itself for the description boundaries and location of the land covered, we find three distinct references to the lands:

1. A general reference to the farm:
   All those our severall closes peeces & parcels of land Meadows & pastures formerly called ye Dukes Farme & the Kings Farme and now known by the name of the Queens Farme, with all & singular ye fences Inclosures Improvemts and appurtenances whatsoever thereunto belonging.
2. A reference description as:
   As ye same are now in ye occupacon of an enjoyed by George Ryerse of ye Citty of New York Yeoman, or by any former tenant.
3. A metes and bounds description as follows:
   Scituate lying and being on ye Island Manhattans in ye Citty of New York aforesaid and bounded on the East partly by the Broadway Partly by the Common and Partly by ye Swamp and on ye West by Hudsons River AND ALSO all that our Peece or Parcell of Ground scituate & being on ye south side of ye Church Yard of Trinity Church aforesaid Commonly called or knowne by the name of ye Queens Garden fronting to ye sd Broadway on the east and extending to Low Water marke upon Hudson River on the West, All which sd, premisses are now lett at the yearly rent of thirty pounds.

As we leave the general descriptive reference, with which this case seems to abound, let us not overlook for a moment the specific metes and bounds. Usually the metes and bounds description in a conveyance, specifies particularly the lands referred to generally.

Let us dissect the metes and bounds description in this grant with a view of ascertaining, if possible, what lands were included within the general named reference Dukes-Kings-Queens and ultimately the Church Farm.

The grant definitely states that the property was bounded on the

North .....no description.
South .....no description.
East .....partly by the Broadway, partly by the common, partly by the swamp.
West .....by Hudson's River.

On the north we are limited by the North Pole, and on the South we are limited by the South Pole. On the East we have first Broadway, a whole mouthful could be said about this little old Broadway! It is the main gut to the spot where lambs go to be sheared, by experts, where the welcome sign is always out, said the spider to the fly, the spot Woodrow Wilson dubbed "The Invisible Empire," the home of the chain-banking fraternity, where the mother of industrial slavery calls her children to the banquet, set with viands a delight to the eye, meat to the soul, and fit for the gods.

But we are dealing with a different Broadway, a Broadway of wooded fields and meadows, a peaceful farming center, where only sound of the sythe in the fields, and the sighing of the winds in the trees came to disturb the rest of the stranger, but who shall say that this first sheep shearing—this first stripping of the lambs was not the forerunner and prophetic circumstance of the after years. Was the habit thus formed impossible of breaking, and did the spirit of greed hover over, and eventually engulf that part of this fair City?

Is it apparent, from this description, that, aside from the general reference to the property by the name of Duke's-King's-Queen's Farm, and the possessory description of "Being the lands in occupation of George Ryerse," all other descriptions are defective, and fail, wholly and utterly, to describe any property?

JONES V. JOHNSTON, 18 HOWARD, 153:

The court below, as appears from the instructions referred to, assumed the lot No. 34 should be located on the ground as of the time of the survey and plat of February 1833, some two years and nine months previous to the conveyance to the plaintiff and not at the date of that conveyance, and if at that time the dividing line between 34 and 35 would strike the lake north of where the north pier of the harbor was subsequently built, so as to give a lake boundary at that time above the pier, the plaintiff would be enabled to take under his deed not only lot 34 as laid down on the plat, but all subsequent accretions by alluvion or dereliction, whatever might be the extent of the new formed land. By the like assumption and process of reasoning, if the present plaintiff should convey the lot with the same specific boundaries, the north line sixty feet on Water Street, and side lines extending at right angles to the lake, the deed would carry with it the whole of the new made land outside the lines of the deed which is now in dispute.

Now, one answer to this assumption is, that a grantee can acquire by his deed only lands described in it by metes and bounds, and with sufficient certainty to enable a person of reasonable skill to locate it, and cannot acquire lands outside of the description by way of appurtenance or accession.

About a month after the king's grant, and on April 16, 1664, the Duke of York commissioned and appointed Colonel Richard Nicolls the first English Governor of the Province.[19]

With the change in proprietors, instantly came the change in name, not alone of the entire province, previously known as New Netherlands, but of the City, formerly known as New Amsterdam. Both the Province and the City took their name from the Duke of York, and thus were the lands christened and became known as the State and City of New York.

It was at this time that the farm, held by the Dutch West India Company for the convenience of its Governors, was also christened, and became known as the Duke's Farm, and this christening took place some six years before it is claimed or asserted that this spurious Lovelace transcript was made, and some forty odd years before the Queen Anne grant of 1705.*

For the location of this particular farm, originally known as the Company's Farm, as well as the location of "The Dominie's Bowery" or the "Anneke Jans Bogardus Farm," and in order that my readers may see that these maps are all in accord on this point at least, please turn to maps, Plates Three, Four and Twelve, and you will see there is a well-defined line of demarkation between the two properties. Now turn to map, Plates Thirteen and Fourteen, for the location of the King's Farm, and particularly note on this map this endorsement—

Read on the hearing
Jan. 20th, 1847,
R. E. Clk.

Particularly observe that each map fixes the northern boundary of the Companys-Dukes-Kings-Queens Farm at a point approximately at Chambers Street, which today is to the north of the present City Hall Park.

These are unquestionable authentic proof, and establish beyond peradventure of a doubt that from its inception the Dukes-Kings-Queens Farm comprised no more or less territory than the lands originally known as the Dutch West India Company's Farm.*

Recognizing the fact that three years after the confiscation, and the change in the name of the Company's farm to the Duke's Farm, the English Governor Nicolls regranted and confirmed the Bogardus Farm title to the children and heirs of Anneke Jans Bogardus, we have, during that interim, and no one can gainsay it, a Duke's Farm and Dominie's Farm, neighbors. Not alone that, but we have for a time after the confirmation of the title to the children and heirs of Anneke, the same conditions existing, and those conditions continued to exist, if the Lovelace transcript is, as in my opinion, a spurious record.

With the description in the Queen Anne Grant[4] before you; with the declaration in that grant that the lands described were no more and no less than what had been originally the Duke's Farm, then the King's Farm, then the Queen's Farm; with Governor Nicolls' confirmation grant to the children and heirs of Anneke Jans Bogardus, of 1667[5], made three years after the re-naming of the Province, the State of New York; the re-naming of the City, the City of New York; the re-naming of the confiscated Company's Farm, the Duke's Farm, in honor of the new proprietor, the Duke of York, do you believe there was any question about these two farms being separate and distinct parcels of land? Will you believe that at any subsequent time any governor of the colony attempted to re-convey and re-grant to others, aye, even Trinity Church, lands previously granted.*

History has not alone preserved the map-records with reference to the location of these two adjoining farms, but historians have left a pen record further declaratory of the neighborly location of these two farms, for we find upon the subject of these now famous pieces of property, they were sublimely in tune, in perfect chorus, perfect in tune and rythm.

David T. Valentine, who was, for many years, Clerk of the Common Council of the City of New York, in his history of the City of New York at pages 69, 70:

On the road to Harlem, near the Governor's Farm or "Bouwery" a small settlement of three or four houses sprung up, about the time of Governor Stuyvesant, a tavern having been set up there by a Mr. Jansen. This place became a resort to pedestrians from the town, the road having been handsomely laid out, of unusual width, and greatly improved under Stuyvesant's direction. One or two small taverns were on the road between the town and the "Bouwery", the principal of which was that of Wolfert Webber, near the present Chatham Square, who was, probably the earliest settler on that road between the City and Harlem. Webber's house was built in the year 1648, and had been the center of many scenes of stirring incident, having frequently been assaulted and robbed in times of Indian troubles.

The only other hamlet or village on the Island was at "Sapokanican," afterward called Greenwich, and now in the Eighth and Ninth Wards of this City. Plantations were established here soon after the settlement of the Island, and at the time of Governor Stuyvesant, a few houses formed a small village there.

It was before observed that several plantations on this Island were under cultivation by individuals. The West India Company also owned several large farms, which they had selected and reserved to themselves, soon after the settlement of the Island. One of these, commonly called the Company's Farm, lay on the present west side of Broadway, between Chambers and Fulton Streets, and extending to the North River Shore. It was confiscated by the English, and became afterward known as the King's Farm. Subsequently it was ceded to the Trinity Church. Three other farms were let out to tenants. They lay along the highroad, at present known as Chatham Street and the Bowery.

At page 280 we find the following:

> Mr. Dey's property was three hundred and nine feet front on Broadway, and about eight hundred feet in depth to Hudson River, containing about five and a half acres; beyond this lay the "King's Farm" a large estate, so called, which had, upon the first settlement of the island by the Dutch been set apart for the uses of the West India Company then the proprietaries of the island. It is supposed to have been confiscated by the English, upon taking the city, and to have been appropriated to the conquerors. The title, at the period here referred to was in Trinity Church which corporation began about the year 1720 to lay out the south part of the farm into lots * * * * * * * The streets laid out in King's Farm, extending from Fulton to Chambers Streets, were named after leading officers of Trinity Church. Vesey Street was so-called after the Rev. Wm. Vesey, Rector of Trinity Church; Barclay Street after the Rev. Mr. Barclay who succeeded Mr. Vesey as Rector; Robinson Street after a leading citizen; Murray Street after a distinguished lawyer of this city and one of the officers of the church; Warren Street after Sir Peter Warren, commander of the British Naval forces at this station * * * * Chambers Street after John Chambers Esq., a lawyer born in this City and for many years a leading citizen in civil and Church affairs.

ELIZA C. DEERY'S LESSEE V. MARTHA CRAY, 10 WALL. 263:

The proposition of the plaintiff is, that the deed from Samuel L. to Elizabeth Chew is void for uncertainty for the reason that the beginning of the northern line is not fixed, and the plat referred to is not produced. No parol proof, it is contended, can help this deed, which is to be treated as an absolute nulity.

* * * * * * * * * *

It may be conceded that if there was nothing referred to in the deed by which the commencement of this line, or any other part of it, could, at the date of the deed, been fixed, that it would have presented a patent ambiguity.

In Thomas v. Turvey 1 Har. & G. 437, three levies and execution sales were rejected, the schedules of which described the land as "part of Borough Hall, containing the supposed quantity of 130 acres of land, more or less." Borough Hall was a tract of 500 acres, and there was nothing by which the location of the 130 acres could be shown, nor any evidence that it has ever been located.

In Hammond v. Norris 2 Har & G. 130 the description in the deed was "all these two parcels of land, being parts of a tract of land called Wood's Inclosure, and sold to said John Howard by Joseph Wood, one parcel containing 86 acres and the other 94 acres, as by deed duly made and recorded in Frederick County appears." The court over-

ruled the plaintiff's objection and permitted the deed to be read in evidence, but, as it subsequently appeared that there was no such deed as that referred to on record in Frederick County, and as no other satisfactory proof was made of the location of these tracts within the larger tract of Wood's Inclosure, the court finally held that it conveyed no title.

In Fenwick vs. Lloyd, 1 Har. & G. 172 the lands was described as part of Resurrection Manor, containing 251 acres, more or less, Resurrection Manor was a large tract of 4,000 acres, and the sheriff levied on and sold 251 acres of it, with no other description than that stated. Nothing else was shown by which this quantity could be located and identified, and the description was clearly a patent ambiguity on which the levy and sale was rejected as evidence.

ROLLIN V. PICKETT, 2 HILL 552:

The seventy acres of land to be conveyed are neither described in the contract, nor is there anything from which it can be ascertained on what part of the earth the premises may be found. In Fish v. Hubbard (21 Wend. 651) which goes far enough, the parties spoke in their contract about water, mill-dam, fulling mill, and carding machine, the grist mill and sawmill. But here they have not mentioned any existing mark or thing by which the land may be identified and located. The only words on which the plaintiff can rely to get rid of the difficulty are these: "B. Pickett is to have half the wheat on the piece that is to be sold by Henry Rollin not exceeding seven acres". Now, suppose it should be ascertained that Henry Rollin had before that time agreed with the plaintiff, or with someone else, or that he had a settled purpose in his own mind to sow some particular piece of land, not exceeding seven acres with wheat, how could it be ascertained in what manner the remaining 63 acres were to be located? It is not said that the seven acre piece was part of a farm or lot of land, or that the plaintiff was to convey a farm or lot of land containing seventy acres. In Fish v. Hubbard, the defendant was to furnish water out of the mill dam, sufficient to carry the fulling mill and carding machine. When the water, the dam and the mills should be found, there could be no difficulty in settling the proper mode of enjoyment, but here, should we find out where Henry Rollin intended to sow seven acres of wheat, we should still be utterly in the dark as to which way—whether north, south, east or west—the defendant was to go to get his remaining 63 acres. Although contracts ought, if possible to be upheld, I think this is void for the want of certainty in describing the land. There are one or two other difficulties in the way of supporting this action, but they need not be considered.

JACKSON V. ROSEVELT, 13 JOHNS., PAGE 97:

This description is too general; it does not define the lots, or parts of the lots of lands owned by the defendant named in the judgment, nor is the allotment in which they are situated mentioned, although, by the case, it appears that the patent had been divided among the proprietors, and that such partition was notorious, for it is stated to have been recorded in the office of the Secretary of State, and that it had been confirmed by an act of the Legislature. To say, therefore, that a sheriff's deed for all the lands and tenements of Elizabeth Ellis and Sarah VanKleeck, in this patent, containing a tract of land evidently one of the most extensive in the state, and comprehending a district of country lying in several counties, is sufficient, would be giving an unprecedented latitude to the officer making a coercive sale, and by mere operation of law, and might be attended with consequences destructive to the rights of the debtor. No estimate of value of the lands offered for sale could be made from this general and indefinite description; and, without some definite information as to its situation there must be generally a sacrifice of property, either by the debtor or purchaser. In most instances, if not invariably, the former would experience a loss. The officer ought to prevent such a consequence. The least that can be required of him, in making the sale, is so to locate the lands, as to afford means to the bystanders and bidders, of informing themselves as to the value. That was not done in the present case. The deed given by the sheriff of Ulster must be deemed wholly inoperative, for the want of a sufficient description of the premises alleged to have been sold by it.

PECK VS. MALLAMS, 10 N. Y. PAGE 530:

In point of fact, at the time of the sale, there were two distinct parcels of land in the town of Niskayuna and in Swit's patent, belong to Kane and wife, lying south of the Mohawk river, and separated from each other by a piece of land of about 80 acres belong to Derrick VanVranken. The western piece, consisting of 111 acres, 3 roods and 23 rods, was taken possession of by John Whittick, under his purchase; the eastern piece consisting of 199 acres, 2 roods, and 4 perches, was regarded by the parties as purchased by Foster, and was, as has been already stated, possessed by Whittick to whom Foster conveyed his purchase.

The description in the sheriff's deeds of the property exposed for sale is of a single parcel, supposed to contain 400 acres. The town and the patent agree with the parcels before mentioned. It is described likewise as lying on the south side of the Mohawk river as those parcels were actually situated.

It is said to be bounded on the south and east by lands of Derrick VanVranken and others; the western parcel of 111 acres, was bounded on the south and east by lands of Derrick VanVranken; the eastern parcel was bounded on the south by lands of Derrick and Claus VanVranken, but upon the east it was bounded by the lands of Peter N. or Garret I. VanVranken. The sheriff's deed makes Derrick VanVranken's land the western boundary; it was the western boundary of the eastern parcel, and the eastern boundary of the western parcel, which was bounded on the west by the lands of Thompson.

The general rule in regard to the construction of the description of the premises in a deed is one of the utmost liberality.

* * * * * * * * * *

If there are certain particulars once sufficiently ascertained, which designate the thing intended to be granted, the addition of a circumstance, false or mistaken will not vitiate the grant. But when the description of the estate intended to be conveyed includes several particulars all of which are necessary to ascertain the estate to be conveyed, no estate will pass except such as will agree to every part of the description. The boundaries are the only means of ascertaining the premises; the only western boundary is

Bouwerie of Dominic Everardus Bogardus
Company
"Kalch" or "Kolch" Hoek
mon Pasture
Cattemuts Hoek
Beeteraars Kreupelbos
Lockermans' and Leendertsen's Bouwerie
The Ferry

ruled the plaintiff's objection and permitted the deed to be read in evidence, but, as it subsequently appeared that there was no such deed as that referred to on record in Frederick County, and as no other satisfactory proof was made of the location of these tracts within the larger tract of Wood's Inclosure, the court finally held that it conveyed no title.

In Fenwick vs. Lloyd, 1 Har. & G. 172 the lands was described as part of Resurrection Manor, containing 251 acres, more or less, Resurrection Manor was a large tract of 4,000 acres, and the sheriff levied on and sold 251 acres of it, with no other description than that stated. Nothing else was shown by which this quantity could be located and identified, and the description was clearly a patent ambiguity on which the levy and sale was rejected as evidence.

ROLLIN V. PICKETT, 2 HILL 552:

The seventy acres of land to be conveyed are neither described in the contract, nor is there anything from which it can be ascertained on what part of the earth the premises may be found. In Fish v. Hubbard (21 Wend. 651) which goes far enough, the parties spoke in their contract about water, mill-dam, fulling mill, and carding machine, the grist mill and sawmill. But here they have not mentioned any existing mark or thing by which the land may be identified and located. The only words on which the plaintiff can rely to get rid of the difficulty are these: "B. Pickett is to have half the wheat on the piece that is to be sold by Henry Rollin not exceeding seven acres". Now, suppose it should be ascertained that Henry Rollin had before that time agreed with the plaintiff, or with someone else, or that he had a settled purpose in his own mind to sow some particular piece of land, not exceeding seven acres with wheat, how could it be ascertained in what manner the remaining 63 acres were to be located? It is not said that the seven acre piece was part of a farm or lot of land, or that the plaintiff was to convey a farm or lot of land containing seventy acres. In Fish v. Hubbard, the defendant was to furnish water out of the mill dam, sufficient to carry the fulling mill and carding machine. When the water, the dam and the mills should be found, there could be no difficulty in settling the proper mode of enjoyment, but here, should we find out where Henry Rollin intended to sow seven acres of wheat, we should still be utterly in the dark as to which way—whether north, south, east or west—the defendant was to go to get his remaining 63 acres. Although contracts ought, if possible to be upheld, I think this is void for the want of certainty in describing the land. There are one or two other difficulties in the way of supporting this action, but they need not be considered.

JACKSON V. ROSEVELT, 13 JOHNS., PAGE 97:

This description is too general; it does not define the lots, or parts of the lots of lands owned by the defendant named in the judgment, nor is the allotment in which they are situated mentioned, although, by the case, it appears that the patent had been divided among the proprietors, and that such partition was notorious, for it is stated to have been recorded in the office of the Secretary of State, and that it had been confirmed by an act of the Legislature. To say, therefore, that a sheriff's deed for all the lands and tenements of Elizabeth Ellis and Sarah VanKleeck, in this patent, containing a tract of land evidently one of the most extensive in the state, and comprehending a district of country lying in several counties, is sufficient, would be giving an unprecedented latitude to the officer making a coercive sale, and by mere operation of law, and might be attended with consequences destructive to the rights of the debtor. No estimate of value of the lands offered for sale could be made from this general and indefinite description; and, without some definite information as to its situation there must be generally a sacrifice of property, either by the debtor or purchaser. In most instances, if not invariably, the former would experience a loss. The officer ought to prevent such a consequence. The least that can be required of him, in making the sale, is so to locate the lands, as to afford means to the bystanders and bidders, of informing themselves as to the value. That was not done in the present case. The deed given by the sheriff of Ulster must be deemed wholly inoperative, for the want of a sufficient description of the premises alleged to have been sold by it.

PECK VS. MALLAMS, 10 N. Y. PAGE 530:

In point of fact, at the time of the sale, there were two distinct parcels of land in the town of Niskayuna and in Swit's patent, belong to Kane and wife, lying south of the Mohawk river, and separated from each other by a piece of land of about 80 acres belong to Derrick VanVranken. The western piece, consisting of 111 acres, 3 roods and 23 rods, was taken possession of by John Whittick, under his purchase; the eastern piece consisting of 199 acres, 2 roods, and 4 perches, was regarded by the parties as purchased by Foster, and was, as has been already stated, possessed by Whittick, to whom Foster conveyed his purchase.

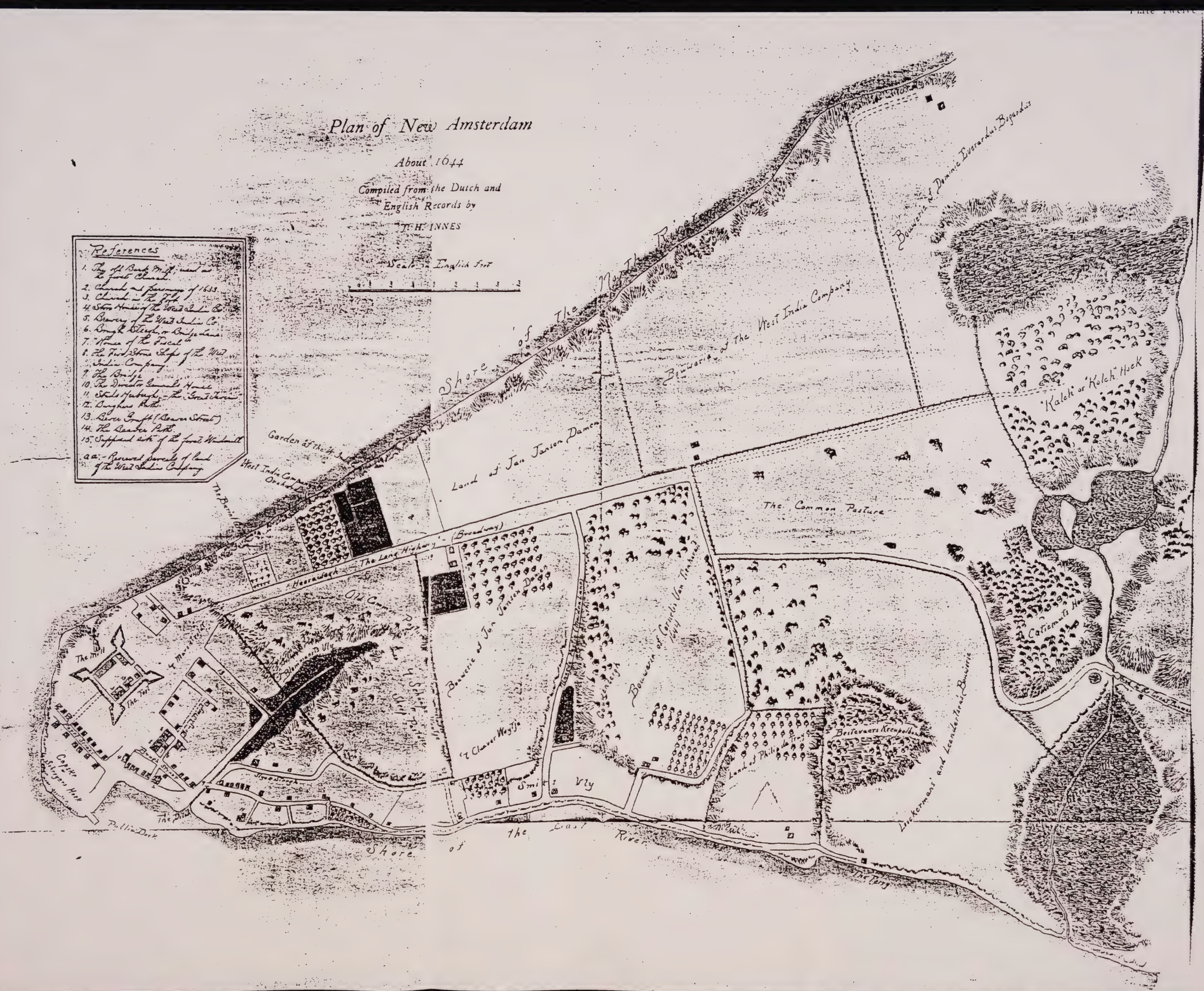
The description in the sheriff's deeds of the property exposed for sale is of a single parcel, supposed to contain 400 acres. The town and the patent agree with the parcels before mentioned. It is described likewise as lying on the south side of the Mohawk river as those parcels were actually situated.

It is said to be bounded on the south and east by lands of Derrick VanVranken and others; the western parcel of 111 acres, was bounded on the south and east by lands of Derrick VanVranken; the eastern parcel was bounded on the south by lands of Derrick and Claus VanVranken, but upon the east it was bounded by the lands of Peter N. or Garret I. VanVranken. The sheriff's deed makes Derrick VanVranken's land the western boundary; it was the western boundary of the eastern parcel, and the eastern boundary of the western parcel, which was bounded on the west by the lands of Thompson.

The general rule in regard to the construction of the description of the premises in a deed is one of the utmost liberality.

* * * * * * * * * *

If there are certain particulars once sufficiently ascertained, which designate the thing intended to be granted, the addition of a circumstance, false or mistaken will not vitiate the grant. But when the description of the estate intended to be conveyed includes several particulars all of which are necessary to ascertain the estate to be conveyed, no estate will pass except such as will agree to every part of the description. The boundaries are the only means of ascertaining the premises; the only western boundary is


Plan of New Amsterdam
About 1644
Compiled from the Dutch and English Records by
J. H. INNES
References
1. The Old Dutch Mill, near the first Church
2. Church and parsonage of 1633
3. Church in the Fort
4. Stone Housing of the West India Co.
5. Brewery of the West India Co.
6. Bough Sleigh, or Bridge lane
7. "House of the Fiscal"
8. The First Stone Stage of the West India Company
9. The Bridge
10. The Director General's House
11. Stoles Hoeck, or The Great Swamp
12. Bowling Alley
13. Beer Graft (Beaver Street)
14. The Beaver Path
15. Supposed site of the first Windmill
aa. - Reserved parcels of land of the West India Company
Plate Twelve
Shore of the North River
Bouwerie of Dominie Everardus Bogardus
Bouwerie of the West India Company
"Kalck" or "Kolck" Hoeck
Land of Jan Jansen Damen
The Common Pasture
Bouwerie of Jan Jansen Damen
Bouwerie of Cornelis Van Tienhoven
Bouwerie of Cornelis Van Tienhoven
Land of Philip de Trieck
Brieftenaers Kroupelhoeck
Lockermans' and Leendertsen's Bouwerie
Cattemus Hoeck
Shore of the East River
The Long Bridge
The Mill
The Fort
Coppie Schryers Hoek
Pallisadoes
The Ditch
Old Company's Bouwerie
Blommen Dal Vly
Smits Vly
't Clover Weytje
Broadway
The Long Highway
Heerewegh
Speedwegh
Garden of the W. I. Company
West India Company Orchard
The Brink

the land of Derrick VanVranken; east of that boundary was a parcel of 199 acres of land which appears to have belonged to Kane and wife. In this parcel, I am unable to locate the land of about 100 acres bid off by Whittick, and as the deed to him preceded that to Foster, which was, of 200 acres of the same parcel, I am equally unable to determine where that was to be found.

Even if these deeds could be sustained between private parties, I think, as conveyances by a sheriff, they are not sufficient. The distinction was adverted to by the Supreme Court, in Jackson v. Roosevelt (13 Johns. 97) The court says: "The least that can be required of the officer in making the sale is, so to locate the lands as to afford means to the bystanders and bidders of informing themselves as to the value." I see no way in which a party entitled to redeem could exercise his right as to lands sold in this manner by a sheriff. Certainly if the certificate of sale was in the terms of the subsequent deed, a party would look in vain to find what 200 acres were struck off to Foster and what "about 100" were bought by Whittick. If the court agree with me in this conclusion, then none of the defendants have acquired any title under the sheriff's deeds, and against them, the mortgage, though unregistered, is effectual.

BOUNDARIES AND LOCATION and A VIEW OF ANCIENT NEW YORK CITY.

We take from this grant, therefore, a general reference to the lands "Formerly called ye Dukes Farme, and the Kings Farme, and now known by the name of the Queens Farme". We are further told, as an aid to the location, that this farm is the "Same are now in occupacon of and enjoyed by George Ryerse," and this reference to George Ryerse's occupation becomes of great significance in view of the failure of the grant to give definite metes and bounds description.*

It is apparent that, at the date of this grant, 1705, what was then known as the Queen's Farm, had been known at a prior time as the King's Farm; that what had formerly been known as the King's Farm, was known at some prior time as the Duke's Farm; so that we are directed by the grant itself, in our quest to ascertain the original location and bounds of this property, first, to discover when this property became known as the Duke's Farm, and, second, what lands were then a part and parcel thereof.*

King Charles the Second, granted New Netherlands to the Duke of York, immediately following the surrender of the Dutch to the English, such grant being dated March 12th, 1664.* Thereupon, the Duke of York became proprietor over all lands in America formerly held by the Dutch, and the Dutch West India Company's possessions were then confiscated and became a part of the Duke's territories. It was only upon the surrender of their former titles, that the inhabitants of the province were able to secure recognition of those titles, and retain their possessions.*

In New Amsterdam and its People by J. H. Innes, on page 4, will be found the following:

> "The West India Company caused to be cleared and placed under cultivation the tract extending from Fulton to Chambers Street and from Broadway to the North River, well known at first as the Company's Bouwery, then after the surrender in 1664 as the 'Duke's Farm' and the 'King's Farm' by virtue of its confiscation to the Crown, and later as the 'Church Farm' the property of Trinity Church."

In the front of this history will be found a map giving the location of Dominie's Bouwery, and the Dutch West India Company's Farm adjoining on the south.—Plate Twelve.

In Wilson's History of the City of New York and Hudson River Valley, Vol. 1, page 221:

> "On the west side of the present Broadway, between Fulton and a line between Chambers and Warren Streets, and extending to the North River was the West India Company's Farm, afterwards known as the King's Farm and by the Crown ceded to Trinity Church. North of it was the Dominie's Farm, or Bouwery. This was the well known domain of Anneke Jans, subsequently the wife of Dominie Bogardus. It originally had been conveyed by Director Van Twiller to Roeloff Jansen, and was subsequently confirmed to Mrs. Anneke Bogardus by Stuyvesant in 1654. North of this was the land of Jan Coles, or Old Jans Land, and a swamp where cattle were often almost submerged."

The following facts, taken from one of the early manuals of the Common Council of the City of New York, published shortly after the year in which the celebrated 4 Sandford case was decided, give a very definite and concise boundary and location of the King's Farm, as well as a vivid picture looking up Broadway from Vesey to Duane.

This report had the endorsement of the Common Council of the City of New York, and was published pursuant to its resolution.

St. Paul's Church occupied a block on the west side of Broadway, between Fulton and Vesey Street; hence it will be seen St. Paul's Church is built on a part of the King's Farm.*

North of Fulton street, on the west side of Broadway, lay the Trinity Church farm, which was laid off into lots about 1760; and the front extending between Fulton (then Partition) street and Vesey street (so called in honor of a former pastor of Trinity), was devoted to the erection of an elegant church, which was completed about the year 1765, and called St. Paul's, which still remains among the oldest memorials of the architecture of that day.

In reviewing the progress of improvements of the section of Broadway between Wall street and the Park, the principal incident of a public character was the erection of a market in the centre of the street opposite Liberty (then Crown) street. This edifice was built in 1738, its dimensions being one hundred and fifty-six feet in length, and twenty feet three and a half inches in width. It remained about thirty-three year, and gave a character to the neighborhood very prejudicial to the beauty and to the legitimate prospects of the street. The buildings in the vicinity were chiefly taverns and lodging-houses, with an intermixture of small stores, while the country wagons and other vehicles congregating around the market almost precluded ordinary passage along the narrow thoroughfare (about twenty feet wide) on either side of the market. At length, after many years of unavailing effort to have the market removed by legislative authority, resort was had to the machinery of the law, and the building was indicted in 1771 as a public nuisance, and its removal was accomplished. A new market-house, bearing the same name, was erected on the southeasterly corner of Broadway and Maiden lane, its main front being on the latter street. By

this arrangement the business establishments which had grown up around the old market-place were not materially injured, and they continued in occupancy for their former purposes until the great fire of 1776, which swept away all those situated on the west side of the street. Of the buildings then destroyed the most notable was the King's Arms tavern, a public house which had a considerable reputation, and was more frequented by country people than any other in the city. It was situated opposite the market, and was constructed of gray stone with narrow arched windows in front. A piazza along the rear afforded a view of the river.

In 1790 a survey of Broadway, from Rector street to the Park, was ordered for the purpose of repaving. Bricks were ordered for sidewalks, and improvements immediately began.

On the west side of Broadway the Tontine tavern, afterward known as the City Hotel, was erected about the year 1794. This was justly considered a model of enterprise in those days, and is said to have been the first building in the city covered with a slate roof. It soon took the lead as the scene of public balls, dinners, concerts, and festivities, and the old Assembly Rooms, which had formerly enjoyed a fashionable popularity, fell into a subordinate position. It was for a long time, in the early part of the present century, kept by John Lovett, and subsequently by Ezra Weeks, Chester Jennings, and other popular landlords, whom our space will not permit us to particularize. Its demolition within recent years makes it properly a subject of illustration. The view was taken after many improvements were made in the neighborhood, but shows the building in its original form.—See engraving next page.

* * * * * * * * * * *

The east side of Broadway was less fashionable as a shopping mart than the opposite side, and the improvement in architecture was less rapid; the buildings at first erected were many of them of two stories, although within thirty years succeeding the Revolution these had mostly given place to first-class edifices, which, with few exceptions were occupied for commercial purposes. Barnum's Hotel, which in 1851 was named the Howard House, has up to the present time maintained a high reputation. The Tremont Temperance House, formerly occupied No. 110 Broadway. The New York Atheneum, was established in 1824 on the corner of Broadway and Pine street. In 1825, the National Hotel, 112 Broadway, corner of Cedar street, was finished.

Within comparatively recent years nearly all the cross streets leading into Broadway in this section, have been widened and improved. In 1833 Liberty street (previously to 1794 called Crown Street), was widened from Broadway to Greenwich street. In 1834 Pine street (previously to 1794 called King street), was widened from Broadway to Nassau street. In 1836 John street was widened from Broadway to Pearl street. In 1834 Fulton street was widened from Broadway to Ryders' alley. In 1852 Liberty street was widened from Broadway to Greenwich street. In 1851 Dey street was widened from Broadway to Greenwich street. In 1854 Wall street was widened from Broadway to Nassau street.

Broadway, From Vesey Street to Duane Street.

This part of Broadway was first surveyed in 1760, by Mr. Marschalk, a city surveyor, who then produced to the city authorities "a draft of a road he had lately laid out by order of the Corporation, beginning at the Spring Garden House, where the street is eighty-two feet six inches wide, and extending thence north, 37°, east 30 m., until it comes to the ground of the late widow Rutgers, leaving the street there of fifty feet wide," which is approved and ordered to be recorded. The street was called Great George street, which it retained about thirty years.

On the west side of the street lay the Church farm, and on the east the Commons and the negros' burial-ground.

The Church farm extended in length from Fulton street to near Duane street, and in width from the street, as now established, to the North river shore. It was originally set apart by the Dutch West India Company to be tilled for the uses of their public officers and the garrison in the fort. On the conquest by the English, it was held as the property of the conquerors, and called the King's Farm. In 1705, Lord Cornbury, then Governor, in his zeal for the encouragement of the Established Church, granted this valuable estate to the corporation of Trinity Church.

At about the same time with the opening of Broadway, the Church had the farm divided off into streets and lots, and made cession of the former to the city authorities. These side streets still remain nor, except in the instance of Park place, which was originally called Robinson street, have their names been altered.

The old farm house, attached to the King's farm, stood upon the site of the present Astor House. The various tenants, so far as we have been able to discover them, were successively, John Ryerson, Francis Ryerson, Mr. Harrison, Mr. Balm, Cornelius Cozine, and Adam Vandenberg. The house was long kept as a tavern by Adam Vandenberg, and known as the Drovers' Inn. In connection with the tavern business, were also a public garden and place of amusement. In 1752, Mr. Dugee advertises that he performs on the wire and slack-rope, at a new house built for that purpose, in Mr. Adam Vandenberg's garden. In December 6, 1747, Cornelius Vandenberg notified the public that he designed to set out as Albany post, for the first time in that winter, on the Thursday following. All letters to go by him to be sent to the Post-office, or to his house near the Spring Garden. Vandenberg was still in the occupation of these premises at a period close on the time of the Revolution, as we find from a liberty pole being erected opposite his house, "where the two roads meet."

The first lease from Trinity Church of property along Broadway which is found recorded, bears date in 1760, and was for four lots on the southwest corner of Murray street; the lessees were Bell & Brookman, carpenters; the term, twenty-one years, and the rental eight pounds pr annum.

The principal feature of Broadway opposite the Fields (as the Park was called), during many years, were several public gardens, established soon after the opening of the street. Among these are that of Mr. Montagnie, nearly the northerly corner of Murray street, and that of Mr. Cox, on the block above, near Warren street.

Montagnie's garden became notable in the political history of the times immediately preceding the war, as having for a time been the headquarters of the Liberty Boys. It was opposite his premises in the Fields, upon a spot where the Bridewell was afterward built, that the Sons of Liberty raised their successive liberty poles, which were as often demolished by the soldiers and the tory faction. In 1770, a party of soldiers, after vainly endeavoring to demolish the pole, attacked the citizens standing in front of Montagnie's, and forced them into the house at the point of the bayonet, following up the outrage by demolishing the doors and windows of the building. Montagnie himself, however much he sympathized with the children of liberty, was still a landlord, and was not loth to let his rooms to the other

faction when an opportunity offered some time afterward, whereupon the Liberty Boys removed their headquarters to a building they had purchased opposite the lower end of the Park, which had been previously mentioned as Hampden Hall. Montagnie appears to have been in occupation of these premises subsequent to the Revolution, the place being then known as the United States Garden. In 1802, John H. Contoit, previously a confectioner in the lower part of Greenwich street, took this garden, and conducted it until 1805, being succeeded by Augustus Parise. In after years a building called the Parthenon was erected upon these premises, and was in 1825 occupied as a museum, under the auspices of Reuben Peale. The view on the following page shows the old Bridewell and the building along Broadway at an early stage of the improvement of that locality.

New York Garden, to which Contoit removed in 1805, was situated near Park place, and was conducted by him until his removal in 1809 to No. 355 Broadway, to which he transferred the name of the New York Garden, the site of the latter being about that time built upon, as private residences.

The establishment of peace in 1783, found the portion of Broadway now under consideration with little other improvements than the gardens referred to and a few scattered small buildings. But a general impetus to improvement followed that event, and as may be supposed was not wanting in its effects upon a locality which began to be viewed as one of the most desirable in the city. The more especially as the future of the Commons or Fields was established, in 1785, by its inclosure and establishment as a Park. In 1790 sidewalks were laid between Vesey and Murray streets. In 1793 the street was paved for the same distance. Measures were about the same time taken to extend the street from its terminus at Rutgers' farm, near Duane street, to the distance of more than a mile further; and in 1794 the name of the street was changed, for its entire distance north of Vesey street, from Great George street to Boadway.

About this time the march of private improvement began by the erection of residences of the first class on the block between Vesey street and Barclay street, which were owned and occupied by leading citizens, among whom may be named Walter Rutherford, Rufus King, Cornelius Roosevelt, Richard Harrison, and Abijah Hammond. The premises (then No. 221) next to the corner of Vesey street was owned by the State of New York, and was occupied in 1802 by Aaron Burr, as the official residence of the Vice-President of the United States. Edward Livingston, then Mayor of the city, occupied the adjoining premises (No. 223), which were owned by John Jacob Astor.

At the time of the erection of these fine residences opposite the lower portion of the Park, and for some years afterward, the part of the street lying north was occupied by buildings of an inferior class, though there was little unoccupied ground below Duane street. But advancing through the intervening years, until 1815, we find that at the latter period great improvements had been made, and many of the old buildings had given place to fine residences. Among the residents at the latter period, between Vesey and Barclay streets, were John Jacob Astor, Alexander L. Stewart, and John G. Costar; between Barclay street and Park Place, John C. Vanderheuvel and Mrs. Starten; between Park Place and Murray street, Samuel Hicks, Daniel Boardman, William Rhinelander, John Haggerty, and Henry Laverty. Between Murray and Chambers streets new buildings had been erected, and between Chambers and Reade streets was the fine residence of Matthias Bruen.

More recent changes and events than those adverted to so crowd upon each other that to attempt to particularize them would involve more space than can be afforded in this essay. It may, however, be justifiable to refer to some of the more prominent public buildings, as the erection of the Astor House in 1838, of Mechanics' Hall, corner of Park Place; of Peale's Museum; the Irving House, corner of Chambers street, and of the American Hotel on north corner of Barclay street, originally erected as a private residence.

Recurring to the east side of Broadway, within the limits under review, we have to relate some brief details concerning the Park, known in the Dutch time as the Vlacte or Flat, at a later period as the Commons, at a still later period as the Fields, and finally, after its inclosure, called the Park. These few acres have a history full of local interest to the New Yorker.

Originally a portion of the common lands granted to the city by its charter, its character for many years was merely that of an open pasture or cattle-walk. It seems, however, that at an early period a fortification of a primitive sort was erected near the south boundaries of the Park, which we infer from an entry in the city records in 1699, stating appointment of a committee to view the block-house near the Governor's Garden, to see if it can be fitted into a prison. In the course of the last century it became customary to hold public celebrations there, especially the bonfires which were made on the King's birthday, Coronation day, Gunpowder-plot day, and other public occasions. These had in earlier years been celebrated on the plain before the fort, but the inclosure of the Bowling Green compelled a change of quarters. Its name of the Commons grew into disuse some years before the Revolution, and that of "the Fields" was substituted. The first public building erected within the limits of the Park was a Poor-house, finished in 1736, on the site of the present City Hall. An advertisement of that date calls for proposals from suitable persons stating the terms on which they will perform the duties of Keeper of the House of Correction and Overseer of the Work-house, and Poor-house. The same paper advertises "to let the cellar kitchen at present, the Poor-house, kept by Mrs. Burger." From its public character, as the place of open-air meetings, ball-ground, etc., it attracted to its vicinity various public houses, ball-alleys, and similar places. The public meetings which took place in the Fields during a few years preceding the commencement of the Revolution, were of a significant political character, and are deserving of a brief chronological reference.

1764. Seizure of a press gang's boat, by a mob who carried it to the Common, and burned it.

1765. (Nov. 1) First popular meeting on the Commons in opposition to the stamp act; a gallows was erected, and the Lieutenant-Governor burned in effigy.

1765. (Nov. 2) Another popular meeting on the Commons, held with a view to seize the stamps. Action deferred.

1765 & 1766. Other meetings of similar character until repeal of stamp act, in March, 1766.

1766. (June 4.) Meeting on the Commons to celebrate the repeal of the stamp act. A flag-staff erected on the occasion inscribed "King, Pitt, and Liberty." An ox roasted, and twenty-five barrels of ale, with a hogshead of rum punch, consumed on the occasion..

1766. (Aug. 10.) A party of soldiers from the barracks along Chambers street, cut down the pole erected in June.

1766. (Aug. 11.) Meeting held on the Commons to raise another pole. The people were attacked by the sol-

Plate Fifteen

VIEW OF BUILDINGS IN THE PARK, N. Y.
1809

diers, and several were wounded. A few days after, however, another pole was raised.

1766. (Sept. 23.) The second pole was cut down by persons unknown. Within two days a third pole was erected.

1767. (March 18.) The third pole was destroyed.

1767. (March 19.) A fourth pole, erected and secured by braces and iron bands, and a watch set to guard it.

1767 (March 21.) An attempt renewed by the soldiers to destroy the pole, but they were repulsed by the citizens.

1767. (Dec. 17.) Meeting held in opposition to the mutiny act.

1770. (Jan. 13.) The liberty pole again assailed by the soldiers, who were repulsed.

1770. (Jan. 16.) Another attempt made on the pole, which was successful. It was sawed up and piled in front of Montagnie's door (the headquarters of the Sons of Liberty), on Broadway.

1770. (Jan. 17.) Meeting of upward of three thousand citizens on the Commons. Another liberty pole soon after erected, strongly ironed, and surrounded with a topmast and vane, on the latter of which the word LIBERTY in large letters was conspicuous.

1770. (March 26.) A party of soldiers attempted to unship the topmast; a contest ensued between them and the citizens without fatal results.

1770. (May 10.) Meeting in opposition to importations of British goods.

1770. (June.) A quantity of British goods seized by the Sons of Liberty are burned on the Commons.

1774. (July 6.) Great meeting in opposition to the act of Parliament called the Boston Port Act. At this meeting Alexander Hamilton, then seventeen years of age, first appeared as a public speaker.

1775. Various meetings on the all-absorbing public affairs. The affair at Concord and the battle of Lexington occurred, and the people began vigorously to prepare for the momentous events.

1776. (July 9.) The Declaration of Independence published to the troops paraded on the Commons at 6 o'clock in the evening. A hollow square formed at lower end of the Common, in which was General Washington on horseback. The Declaration was read by one of his aids. At its conclusion three hearty cheers were given.

1776 to 1783. The city in possession of the British.

1776. Cunningham, the British Provost Marshal had the Liberty pole cut down.

A jail, now the Hall of Records, and a Bridewell, between the poor-house and Broadway were erected in colonial times. This latter building was completed shortly before the Revolution, and was taken down in 1839. The three buildings alluded to, to wit; the poor-house, on the site of the present City Hall, the jail (converted into the present Hall of Records), and the Bridewell, were the three prominent buildings standing in the Park at the time of the Revolution. They were all built of gray stone, and with little of ornamentation in their architecture. Grave-yards for their inmates were inclosed near the buildings, so that, though very eligibly situated on an open green, these public edifices presented a lugubrious appearance, quite in keeping with the disagreeable objects to which they were devoted.

These were not, however, the only buildings which had been erected in the Park in colonial times, for at different eras, soldiers' barracks had been constructed in the vicinity of Chambers and Chatham streets. These were rude structures, one story in height, and built of logs. Those which were built in the time of the "old French war" remained in a ruinous condition for many years after the close of that war, being, it is said, not unfrequently tenanted by families of roving Indians, some of whom still hovered around the abodes of civilization, gaining a livelihood by the sale of baskets and their favorite bead work.

After the Revolution, the improvement of the Park was commenced by its inclosure in 1785, with a post and rail fence, which was the first event in its transformation from its ancient character of a "Commons," to the more exclusive condition of a Park. This was but a natural sequence to the progressive condition of the neighborhood, for, as we have seen, it was at this time that Broadway in this section began to assume the character of a fashionable place of residence, and the ancient custom of allowing cattle, and other animals to rove at large upon the green, became out of the new order of things. Nor was it long before the post and rail fence gave place to one of wooden palings, which remained for a score of years, and finally gave place, in 1816, to an iron railing, which was set with due ceremony and public commemoration of the event. In 1805 pavements were first laid along Broadway in front of the Park.

It should be mentioned, in connection with this account of the fencing in of the Park, that a portion of the present inclosure was a part of the negro burial-ground, situated near Chambers street and Broadway. The Corporation (about the year 1796) exchanged other property for the ground taken, so that the northern boundaries, of the Park might conform with a continuous line of Chambers street.

* * * * * * * * * *

Before closing the account of the Park it is proper to mention that besides the public purposes to which it has been actually devoted, others have been from time to time proposed, but abandoned. Among them was the erection of the City Hospital near the old Bridewell. The Corporation voted to give the land for this purpose, but the public voice condemned the introduction of a building of that character within their favorite place of resort, and the present state of the hospital was purchased, the city giving £1,000 towards it in lieu of their donation of land. It was also at one time, in the early part of the present century, proposed to erect a reservoir in the Park for supplying the city with water to be brought from the Bronx river, but the project fell through.

Beyond the commons lay what is the earliest settlement of the town had been appropriated as a burial-place for negroes, slave and free. It was a desolate, unappropriated spot, descending with a gentle declivity towards a ravine which led to the Kalkhook pond. The negroes in this city were, both in the Dutch and English colonial times, a proscribed and detested race, having nothing in common with the whites. Many of them were native Africans, imported hither in slave ships, and retaining their native superstitions and burial customs, among which was that of burying by night, with various mummeries and outcries. This custom was finally prohibited by the authorities from its dangerous and exciting tendencies among the blacks. So little seems to have been thought of the race that not even a dedication of their burial-place was made by the church authorities, or any others who might reasonably be supposed to have an interest in such a matter. The lands were unappropriated, and though within convenient distance from the city, the locality was unattractive and desolate, so that by permission the slave population were allowed to inter their dead there. Apparently no consideration was given by the authorities to the uses to which this place was devoted, for we find that in 1673, the Dutch Governor Colve granted the land to a private citizen, not distinguishing it from vacant lands, the description being as follows: Be-

ginning on the north end of the highway that leads to Kalkhook, containing in breadth fronting on the west side on the highway twenty-four rods, in the rear, on the east side, likewise twenty-four rods; in length on both sides as well along the Kalkhook as on the south, forty-four rods. It was still, however, allowed by the owners, for many subsequent years, to be used as the negro burial-place. The extent of this ground was about 400 feet along the east side of Broadway by 600 feet in depth.

The following proceedings in the common council in June, 1796, are interesting as showing the origin of Chambers street, and the establishment of the boundaries of the Park.

The committee on the memorial of Henry Kip and others, on adjusting boundary lines between the negroes' burial-ground, report and recommended.

1st. That the measure mentioned in the patent to Cornelius Van Borsum for said land, dated October 16, 1673, be, so far as this corporation is concerned, deemed English statute measure.

2d. That a street sixty-five feet wide, to remain a public street, be laid out opposite Chambers street, and to extend from Broadway to the east side of George street, and thence to Augustus street, as delineated on map annexed.

3d. That the claimants to the burying-ground release to the corporation their interest in the land so laid out for a street, and also of all land to the south of said street, and the corporation will release to said claimants all their interest in land north of the said street.

4th. To compensate the claimants for the difference in extent of lands conveyed by them and those conveyed to them by the corporation, the corporation will convey to them lands bounded southeast by Augustus street, south by the street to be opened (Chambers), northwest by the negroes' burial-ground, and northeast by land of Janeway, and also certain lots on southeast side of Augustus street.

Agreed to.

This land was not improved until some years after the Revolution. In 1796 we find a house standing on the corner of Chambers street, owned by Jonathan Provoost, and occupied by William Little, a carpenter. The adjoining house was owned and occupied by Mrs. Provoost. Next adjoining, was the residence of the Widow Provoost. On the southeast corner of Reade street a stable was afterward erected, and remained until the erection of Washington Hall, which was commenced in 1810, and finished in 1812. This building, in an architectural point of view, was, at the time of its erection, one of the handsomest structures in the city. The architect was John McComb, and the building Committee of the Washington Benevolent Society, under whose auspices it was erected, were Robert Morris, Jr., John McComb, Richard Furman, and John B. Coles. It was erected about the same time, that Tammany Hall was built by the opposite party. Its subsequent uses were as a public hall, for meetings, assemblies, &c., and it was also kept as a hotel, being conducted during many of its early years by Peter McIntyre. Its early history is also intimately identified with the old Federal party, of which it was the headquarters, and in its hall of meeting were witnessed many of the exciting events which characterized our political history at about the period of the last war with Great Britain. It was not well adapted to the uses of a public house, and was finally purchased by Mr. A. T. Stewart, who erected upon its site the elegant marble building which was the pioneer of that class of structures on Broadway.

The west side of Broadway, from Chambers to Duane street, was first improved by the erection of a brewery on the corner of Duane street, which is supposed to have been built before the Revolution. Before the commencement of the present century it was owned by John P. Croshong. It continued in existence until the recent improvements in Duane street, having justly acquired the name of the "Old Brewery." A pottery establishment of Alderman Campbell, also between Reade and Duane streets, was erected before the commencement of the present century. A row of brick buildings was afterwards erected on the premises by Isaac Lawrence, which are still standing among the few relics of the past in that vicinity. The block between Reade and Chambers streets was improved by William Alexander, who erected a handsome residence on the corner of Reade street, where he resided in 1796. In the centre of the same block was at the same time another three-story brick house. The other houses on the block were then of wood, and of an inferior class, one of these with its gable end to the street, was divided into two stores, each about twelve feet wide, and here Alexander T. Stewart first commenced the drygoods business in New York. The house belonged to Anthony Steenbach, the brewer. This last named gentleman was a somewhat adventurous operator in real estate, and purchased the lot corner of Broadway and Chambers street, on which he erected a row of small one-story buildings fronting on Chambers street. In the one on the corner of Broadway, the first drygoods store above St. Paul's church, was opened by a Mrs. Manning. Bonfanti's fancy store, at No. 279 Broadway, was a well known establishment from 1824 to 1838. He had previously (from the year 1819) been at 305 Broadway. Palmo's café, on the corner of Reade street, was a popular resort from 1835 to 1840, at which latter period he abandoned his former occupation and erected the opera house in Chambers street, afterwards Burton's theater, now the United States Court.

BROADWAY, FROM DUANE STREET TO CANAL STREET

This section of Broadway is not the less interesting from its association with what has been supposed with some reason to have been the site of an Indian village at some distant period of the past. This supposition arises principally from the name originally bestowed by the Christian settlers upon the hilly promontory extending into the surrounding meadows, viz.: "The Kalckhook," or lime shell point, a name which would hardly have been applied without a local signification. The fact is generally conceded that an extensive cretaceous deposit indicates the site of an aboriginal settlement; and this, in connection with the vicinity of the hill to an inviting sheet of water, well supplied with fish, which stretched along its eastern boundary, has been added probability to the conjecture. It is to be observed, however, that no record exists indicating a settlement of the Indians in this locality, in the times of the early Christian colonists; nor had this vicinity as had some others on the island (Sapokanican, Mereckawich, and a few others), any distinct native title, which has been handed down to us, and we are thus thrown back in our speculations on this subject to the remote times where the history of our island is hidden within the darkness surrounding the nomadic and untraditional ages of the aborigines.

The Kalckhook commenced at a vale near the present line of Duane street, and rose gradually to an elevation of forty to fifty feet above the surrounding meadows; on its summit, a little pond of an acre or more in size appears indicated on some of the early maps. Its extent embraces about forty acres, the whole of which was granted by Governor Kieft to Jan Damen, in the year 1646. Some forty years subsequently it came to be the property of four owners, who made

partition of it, though it still laid in common and the public pound was established on its summit. One of these portions was assigned to Jacobus Van Cortland, the most of which remained in the family of that name for over a century, as will be noticed in tracing its subsequent history. The westerly half, another portion, came into the possession of Anthony Rutgers, a leading citizen of New York, who, about the year 1730, erected there a handsome residence, and occupied the premises until his death, some twenty years afterwards. He surrounded his habitation with elegant shrubbery in the geometrical style of rural gardening of those days. Long walks bordered with box-wood, and shaded and perfumed with flowering shrubs, extended in various directions in the parterre, fronting the house. The favorite orchard extended along the southerly side of the mansion, while the pasture lands and cultivated fields extended toward the north. It was a charming rural residence, and even in after years, when its quiet and domestic characteristics had given place to the festive incidents attached to a public resort, the advertisement of the proprietor expressed it as judged to be the most rural and pleasing retreat near the city.

The fashion of the last century led idlers and pleasure-seekers to suburban places of amusement, where music, dancing, and feasting contributed their share in the amusements of the hour. The names of Ranelagh and Vauxhall, near London, are familiar even to the modern American reader, as the literature of the last century popularized those resorts of the idle and gay of London society. Their glories found imitators throughout all parts of the British dominions, and New York had both a Vauxhall, and Ranelagh; the latter of which was the former residence and garden of Col. Rutgers. This establishment was conducted under the auspices of Mr. John Jones for some years immediately previous to the revolutionary war. His advertisements describe the place as being laid out at great expense, with all conveniences for breakfasting, and every entertainment for ladies and gentlemen. A complete band was in attendance every Monday and Thursday evening during the summer, in a large dancing hall, which had been erected in the garden. The Rutgers' estate was brought into the market for sale in 1770, and the first sale was to an association organized for the establishment of a hospital, an institution until then unknown in New York. It was at first proposed to erect the building in the Park, but, as has been elsewhere stated, that project was abandoned, and the site fixed upon the Rutgers' orchard. The hospital was chartered in 1769. Funds were subscribed in 1771, and the city corporation added £1,000 to the contribution in lieu of the land which had been previously set apart for this edifice. Five acres were purchased in 1772, and the building was commenced September 2, 1773. The cost of the building was about $18,000. In 1775 it was partly destroyed by an accidental fire; it was, however, sufficiently repaired to serve as barracks for the British soldiers during the war. Some years after the return of peace it was reopened as a hospital. The inadequate funds arising from private subscription were from time to time aided by legislative action, and the institution still remains, with some additions to the original structure, and is distinguished as one of the most beneficent as well as the most ancient of the benevolent enterprises organized by the citizens of New York.

The principal historical incident connected with the New York Hospital was the "Doctors' riot," in 1788, which originated from the violent prejudices then existing against the practice of exhuming bodies for dissection. In great Britain a class of persons had grown up profanely called resurrectionists, who supplied the medical schools with bodies, often it was said those of respectable persons recently interred. The stories, perhaps exaggerated, occasioned great popular prejudice against the medical colleges, which in New York was exasperated by the indiscretion of students who wantonly exposed the legs and arms of their subjects dangling from the hospital windows. The populace took fire at this inhuman exhibition, and a riot occurred in which several lives were lost.

The erection of a reservoir for supplying the city with pure water was the next event of historical importance in connection with this portion of the city. The subject had long been agitated, and the necessity of some relief was becoming more manifest as the city increased and prospered. The public wells in the streets of the city supplied water of brackish taste, which horses, unless accustomed to it would not touch. This was ascribed to the narrow width of the island at the lower portion, which did not permit sufficient filtration of the salt water of the rivers; but several of the wells in the vicinity of the Kalckhook pond supplied excellent water, and thence the inhabitants of the city were daily furnished with their "tea water." From this arose the project of sinking large wells and pumping the water into an extensive reservoir whence it might be carried through the city in wooden pipes. The elevated hill through which Broadway (then Great George street) was designed to run was fixed upon for the purpose, and in 1774 the city authorities purchased lands of A. & F. Van Cortland at £600 per acre. The work was commenced under the supervision of Christopher Colles, one of the earliest professional engineers established in the city, good water reported as being found in the wells. The reservoir was completed and wooden pipes were laid through the streets. The first contract for the latter being for 60,000 feet, at a cost of £1,250. The work was completed about April, 1776. The reservoir stood on the east side of Broadway, near the southeasterly corner of the present White street and Broadway. It is to be remembered, however, that this was many years before streets were cut through in that vicinity. As to the history of the reservoir during the occupancy by the British, which took place a few months after its completion, and continued till 1783, we have no positive knowledge, but it is believed that it was not used during that period, and probably proved to be inadequate to its objects, as we find the Manhattan company, which was subsequently organized for the purpose of supplying the city with pure and wholesome water, petitioning the city in 1799 for permission to occupy the former reservoir until it could be ascertained if the water should prove to be of sufficient quality and quantity to supply the city. Their petition was granted, but from the fact that the company soon after established their works in another locality, it is inferred that the original site was not approved. The property of the Corporation at the reservoir, Broadway and White streets, was sold in lots in 1810; those on Broadway selling as high as an average of $3,000 each. The total sale amounted to $25,500.

The account thus far given, has shown the improvements in that section prior to the revolutionary war. "During the seven years in which the city was occupied by the British, the history of the Kalckhook was of a military character. The hospital, which was tenanted by soldiers, was fortified by works thrown up around the building, and for greater security a block house, and some other fortifications, were erected on the north side of the point overlooking the meadows. The foregoing map, executed by a British officer,

shows the condition of that vicinity towards the close of the British occupation.

As affairs assumed a settled condition after the war, the improvement of this part of the city was undertaken by the regulation and opening of the streets. The natural condition of the surface was unequal, and required much filling and excavating in various parts. Thus when sidewalks were first proposed in 1791, to extend from the Bridewell, in the Park, to the hospital, it was reported by the surveyor that the requisite lowering of Broadway, at Warren and Chambers street, would be about three feet, while at the depressed portion, through which Duane street was laid out it required to be raised about eight feet. Thence up to the hospital it required lowering to the extent of ten feet at the latter point. Nearly opposite the hospital was the handsome residence of Mr. David M. Clarkson, the first house of any size erected in this vicinity on the line of Broadway. At this point the sidewalks were proposed to stop; but the digging away of the street as far as the meadows, it was designed to proceed with. Some years elapsed, however, before the cutting down of Broadway was finally carried into effect, when the deepest cutting was found to be between the present White and Walker streets, where the street was cut down below the natural surface to the depth of about twenty-three feet. The regulation of the street was continued to the stone bridge at the meadows.

Before proceeding to note the progress of improvements in that section, it will be found convenient to allude to the names of the cross streets, several of which have been changed at various periods.

Barley street, so called after a brewery west of Broadway, was afterwards called Duane street.

Magazine street, so named, from the reason that it led past the old Powder house on the little island in the pond, was afterwards called Pearl street.

Catharine street has been altered to Anthony street, and Catharine lane and Leonard street have retained their names.

Sugar-loaf street has been altered to Franklin street.

White, Walker and Canal streets have retained their original names.

The improvement of the east side of Broadway between Duane and Pearl streets, was commenced soon after the close of the Revolution.

* * * * * * * * * *

The block between Leonard and Franklin streets, soon after the Revolution, was at first improved by the erection of a residence by Mr. David M. Clarkson, a merchant.

A portion of the Kalckhook south of Van Cortland's property had come into the Depeyster family, and before the Revolution was used by them as pasture land, it being then customary for the wealthiest families in the city to supply themselves with home-made butter and the fresh milk of their own cows. Madam Margaret Depeyster was the last proprietor of whom we find any account who used the pasture-land for its original purposes. It had become marketable for building purposes, and was sold off by the heirs. David M. Clarkson, a New York merchant, married one of the daughters of Madam Depeyster, and soon after the Revolution he erected a residence about midway of the present block between Leonard and Franklin streets, on the easterly side of Broadway.

* * * * * * * * * *

On the lots of Mr. King a panoramic exhibition was under the charge of John J. Holland, in 1810.

Soon after this period this property began to be improved by the erection of residences, and we find that about the year 1813, houses of a superior class were constructed. These residences were at first occupied as follows: No. 350, by Thomas Cooper; No. 352, by Stephen Price; No. 354, by R. F. Muller; No. 356, by Abraham Herring, and No. 358 by Francis Depau. The principal incident connected with those buildings, previous to their recent final demolition, was the alteration of Nos. 350 and 352 (corner of Leonard street) into a hotel, as the Carlton House, kept in 1850, and for some years subsequently, by Mr. Hodges.

North of Franklin street improvements were deferred for some years. A great part of the property still remained in the representatives of the old Van Cortland interest in the Kalckhook, and other lots, formerly used by the reservoir, belonged to the Corporation. One building, however, of considerable public notoriety in its day, deserves to be mentioned. Old histories recount that when itinerant circus performers found their way to New York they were accustomed to exhibit on the hill above the Collect, and perhaps to this may be ascribed the establishment of a place of amusement on Broadway, north of White street, which, in 1795, was called Rickett's Amphitheatre. It occupied three lots, and by advertisements in newspapers about the beginning of the present century, we find it used at intervals for circus and theatrical performances, and for panoramic exhibitions. It seems to have been discontinued about the year 1813.

The few disconnected cottages which occupied the east side of Broadway, between Franklin and Canal streets, began to give way before the march of improvement about the year 1818. Handsome residences were then erected between Franklin and White streets, owned by George Rapelje, John M. Bradhurst, Samuel Watkins, Richard Kingsland, James Gillender, and William M. Cutting (afterwards occupied by Mr. Astor), which remained until a recent period, and between White and Walker streets the first improvements were made by Mrs. Banyar, widow of Goldsborough Banyar, and by Peter A. Jay. Between Walker and Canal streets the first permanent improvement was made by Peter Jay Munro, on the north corner of Walker (afterwards Florence's Hotel), and by George Bruce, on the corner of Canal street. The buildings of a public character afterwards erected in this locality were, Concert Hall, afterwards called the Minerva Rooms, No. 404; Enterprise Hall, No. 410; The Apollo Gallery, No. 412.

Turning our attention to the west side of Broadway, it is found that before the commencement of the present century there had been about twenty houses erected, commencing with the public house and garden of Conrad Vanderbeck, on the north corner of Duane street, and ending with the Tannery of Thomas Duggan, near the stone bridge afterwards the line of Canal street. These houses were all small frame buildings, and, with one or two exceptions, are not of sufficient interest for description.

Between Anthony and Leonard streets, at the commencement of the present century, was a building occupied as an independent church. In the same neighborhood was also a public garden, which, before the cutting through of Broadway, stood on the top of the Kalckhook hill, overlooking a large extent of surrounding country. This was erected before or during the Revolution, as it is located upon a map made in 1782. It was afterwards known as the White Conduit House, a rear view of which is here given.

In 1796 there appears to have been a public garden in that vicinity under the control of William Byram. It is described as a house and garden near Leonard street, but whether on the same plan as that before described, does not more definitely appear. After the street was cut, this

garden was kept by Mons. Corri, a Frenchman, whom we find to have commenced his vocation in New York by selling mead and cakes on the Battery, where he was allowed to give additional attraction to his stand by illuminating with colored lamps. This garden in Broadway was, in 1805, called Mt. Vernon Garden. The cutting through of the street left it high above the level, and it was reached by a flight of steps. Flying horses and other amusements were a part of the attraction of the place. When John H. Contoit, about 1809, left his New York Garden, opposite the Park, he established himself on the west side of Broadway, between Leonard and Franklin streets, having purchased the house and land formerly of Lewis Nichols, cabinet-maker; the extent of ground being 41 feet 8 inches front, by 182 feet 6 inches deep. He transferred the name of his former place, and gave it the name of New York Garden, which it retained for about forty years, and has so recently been abandoned that its remembrance must be familiar to many of our citizens.

The most marked improvement of Broadway in this vicinity, was the erection, about 1807, of a row of first class residences between Anthony and Leonard streets. These, commencing with the corner of Anthony street, were owned by Thomas Tom, John Franklin, B. G. Minturn, William Denning, William Henderson, and Thomas Stagg, and soon after John H. Howland built on the corner of Leonard street.

At about the same time Mr. Neufbill erected two good dwelling-houses on and next to the north corner of Leonard street adjoining the garden soon after taken by Contoit. We find by an advertisement of sale of No. 347 Broadway, corner of Leonard street in 1812, that the size was 28 x 62, three stories, with stable in the rear of lot; the parlors being furnished with folding doors and marble mantelpieces. Between that time and 1815, Peter Crary erected a residence on No. 361, and Gamaliel Smith one adjoining, on corner of Franklin street.

This was the limit of improvements in 1815, the property north as far as Duggan's at Canal street, being mostly vacant except a blacksmith shop and one or two temporary tenements. During the ensuing five years, however, the street was almost entirely improved by a fair class of buildings, which remained until a recent period.

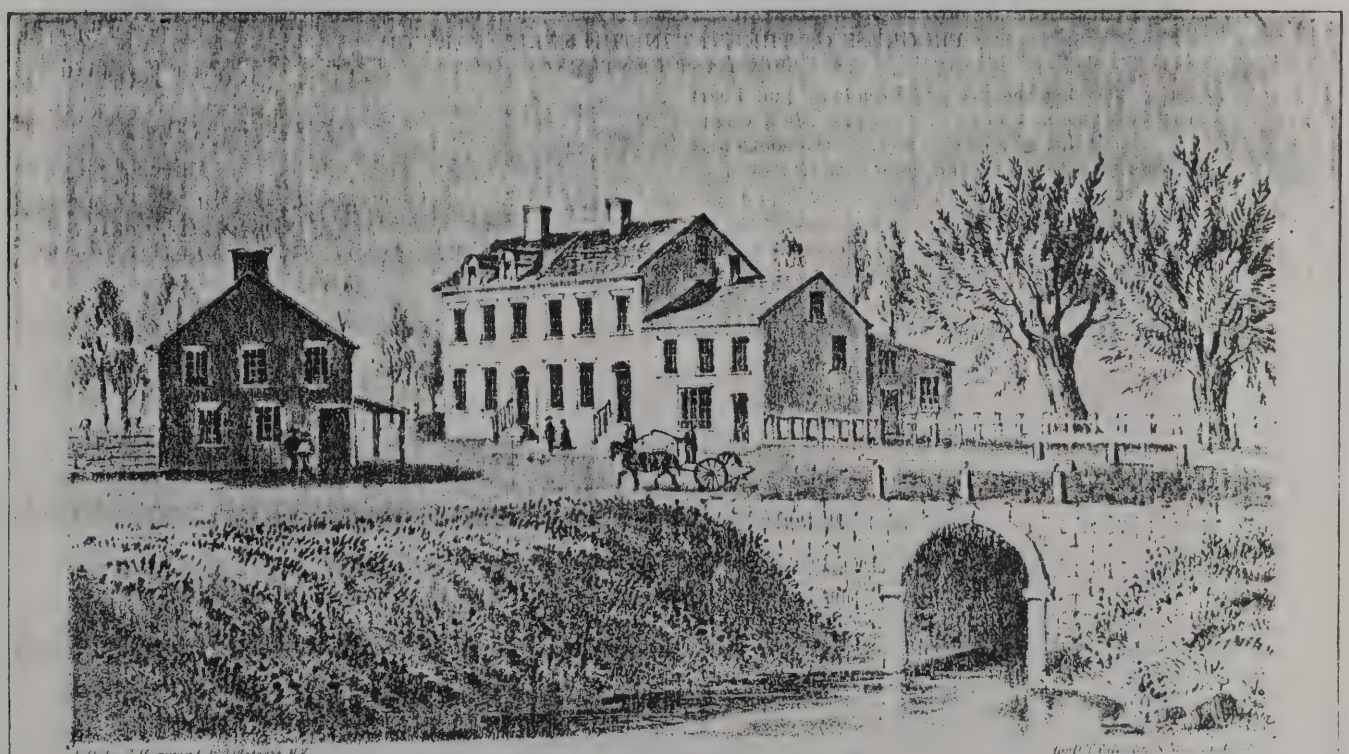
An era in the history of Broadway in the section now under review was occasioned by the introduction of gas, the pipes for which were laid south of Canal street in 1825. At this period the west side of Broadway was already extensively patronized as the fashionable shopping mart. Already many of the drygoods stores had been transferred from the section below St. Paul's Church, and were following the population which was filling up the cross streets below Canal street, and the throng of pedestrians which has characterized the modern era of our great thoroughfare, began to make a noticeable appearance in business hours as well as in the evening when the pleasure-seekers were abroad.

BROADWAY AT CANAL STREET.

The subject of draining the Fresh Water Pond, and filling up the meadows extending to the North River, occasioned great discussion, and a variety of plans, which were changed, from time to time, as occasion seemed to demand.

The history of the meadows and pond has been given

Plate Sixteen



STONE BRIDGE TAVERN & GARDEN
Canal St & Broadway, N.Y. 1812.

in former numbers of the Manual, and will not be recapitulated, except to say, in brief, that the meadows had been granted to Colonel Rutgers, who previous to the Revolution, had constructed a drain from the pond to the river.

The first indication of any bridge crossing this drain occurs in a map executed during the revolutionary war, and, inasmuch as no mention is made of action in the premises by the city authorities, and furthermore, considering that the structure known to have been erected was of too substantial a character, and too obviously designed for public travel to admit the idea that it was constructed by the owners of the swamp, we are left to the inference that the stone bridge was a military work, designed to connect the extensive fortifications on the Kalckhook and Bayard's farm. The bridge was erected on the line of Broadway, and was commonly known as the stone or arch bridge.

Soon after the Revolution, measures were taken for the improvement of the pond and meadows, for which purpose commissioners were appointed under an act of the Legislature. Confining our attention to the meadows, we shall briefly note, in chronological order, the proceedings appearing in the Common Council minutes.

1792. Ordered that the Commissioners under act for regulating the meadows, be informed that it is the wish of the Common Council that they proceed.

1796. A Committee to confer with proprietors along the line of the proposed canal.

1796. Proprietors to be asked to cede land, so that the canal may be forty feet wide, with street on each side thirty feet wide.

1796. Project submitted by Messrs. Mangin, Engineers, for converting the pond into a dock for shipping, with access by canal through the meadows.

Between 1798 and 1804. Plan adopted for filling the pond with earth from the adjacent hills.

Between 1798 and 1804. Report on opening a canal from Broadway to the Hudson river.

Between 1798 and 1804. Order for opening immediately.

Between 1798 and 1804. Committee for reporting a plan, discharged.

Between 1798 and 1804. Resolution to make a tunnel or sewer from the East to the North river.

Between 1798 and 1804, Cessions of ground to be obtained.

1805. Report in favor of an open canal to pass through a street one hundred feet wide.

1807. Memorial by city council to legislature for appointment of commissioners, setting forth the difficulty of regulating and improving the streets in the meadows.

1808. Memorial of owners, stating that the various plans for regulating Canal street have proved prejudicial, and that any one plan, however imperfect, would be better than such frequent fluctuations.

1809. Gouverneur Morris and Samuel De Witt, who had been appointed commissioners, resigned; James Fairlie and Samuel Russell appointed; Mr. Fairlee declines; Mr. Rutherford declines; Wm. H. Ireland and Daniel Ebbets appointed.

The following view represents the stone bridge and drain as it appeared before the final conclusion was come to, to have an inclosed sewer constructed.

The width of the ditch through the meadows was from six to eight feet. Mr. Duggan erected his tannery on the meadows, in the vicinity of the present southwest, corner of Broadway and Canal street. His residence occupied a site at about the present line of Lispenard street.

PROGRESS OF THE CITY IN THE EARLY PART OF THE LAST CENTURY

Plate Seventeen

The property between the present Broadway and Pearl street, on the west and east sides, and between Maiden lane and near the present line of Fulton street, on the south and north sides, was then in fields, and embraced two estates; one commonly called "The Shoemakers' Land," and the other, "Vandercliff's Orchard."

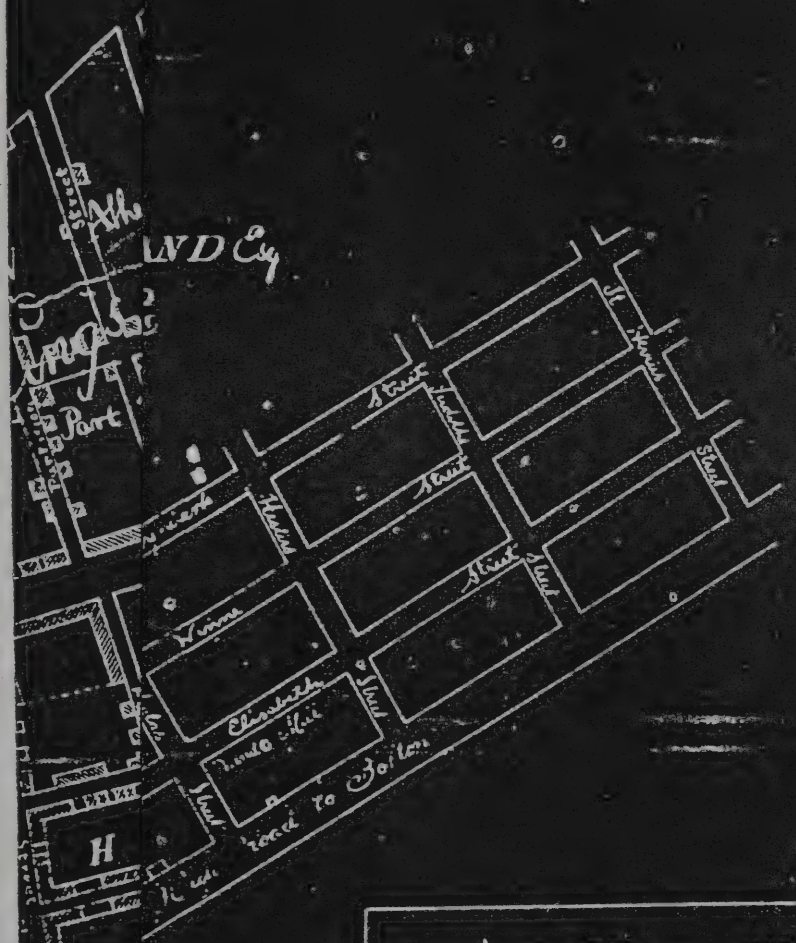
The "Shoemakers' Land was bounded very nearly by the present Maiden lane, Ann street, Broadway, and a line on the east, between William and Gold streets. The origin of the name by which it was thus commonly distinguished, arose from the circumstance previously referred to; that an exclusion of all tan-pits from within the limits of the city was ordered, by reason of which the settlement of tanners and shoemakers, who had almost exclusively occupied the old swamp grounds along the present Broad street, above Beaver street, were driven to other quarters, and seeking the nearest convenient locality, beyond the city walls, established their tan-pits along Maiden lane, which was a marshy valley. An association of four shoemakers (at that time tanning their own leather,) purchased the property now referred to, and carried on their trade in this vicinity. The increasing extent of the city calling for a survey and division of these lands; into town lots, a map was made, of which the following is a copy:

The price of lots on this tract, from the year 1700 to 1720, averaged about thirty pounds of the currency of that day. The tanners subsequently removed their business to the borders of the Fresh Water Pond, north of the present Park, and to Beekman's Swamp.

The "Vandercliff Farm," which lay between the Shoemakers' Pasture and the road along the East river (now Pearl street,) and south of the present Beekman street, nearly to Maiden lane, came, at an early period, into the

K fmmi MDCCLV

By F Maerschalck City SURVEY


Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Road to Boston
Elizabeth
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street
Street

in former numbers of the Manual, and will not be recapitulated, except to say, in brief, that the meadows had been granted to Colonel Rutgers, who previous to the Revolution, had constructed a drain from the pond to the river.

The first indication of any bridge crossing this drain occurs in a map executed during the revolutionary war, and, inasmuch as no mention is made of action in the premises by the city authorities, and furthermore, considering that the structure known to have been erected was of too substantial a character, and too obviously designed for public travel to admit the idea that it was constructed by the owners of the swamp, we are left to the inference that the stone bridge was a military work, designed to connect the extensive fortifications on the Kalckhook and Bayard's farm. The bridge was erected on the line of Broadway, and was commonly known as the stone or arch bridge.

Soon after the Revolution, measures were taken for the improvement of the pond and meadows, for which purpose commissioners were appointed under an act of the Legislature. Confining our attention to the meadows, we shall briefly note, in chronological order, the proceedings appearing in the Common Council minutes.

1792. Ordered that the Commissioners under act for regulating the meadows, be informed that it is the wish of the Common Council that they proceed.

1796. A Committee to confer with proprietors along the line of the proposed canal.

1796. Proprietors to be asked to cede land, so that the canal may be forty feet wide, with street on each side thirty feet wide.

1796. Project submitted by Messrs. Mangin, Engineers. for converting the pond into a dock for shipping, with access by canal through the meadows.

Between 1798 and 1804. Plan adopted for filling the pond with earth from the adjacent hills.

Between 1798 and 1804. Report on opening a canal from Broadway to the Hudson river.

Between 1798 and 1804. Order for opening immediately.

Between 1798 and 1804. Committee for reporting a plan, discharged.

Between 1798 and 1804. Resolution to make a tunnel or sewer from the East to the North river.

Between 1798 and 1804, Cessions of ground to be obtained.

1805. Report in favor of an open canal to pass through a street one hundred feet wide.

1807. Memorial by city council to legislature for appointment of commissioners, setting forth the difficulty of regulating and improving the streets in the meadows.

1808. Memorial of owners, stating that the various plans for regulating Canal street have proved prejudicial, and that any one plan, however imperfect, would be better than such frequent fluctuations.

1809. Gouverneur Morris and Samuel De Witt, who had been appointed commissioners, resigned; James Fairlie and Samuel Russell appointed; Mr. Fairlee declines; Mr. Rutherford declines; Wm. H. Ireland and Daniel Ebbets appointed.

The following view represents the stone bridge and drain as it appeared before the final conclusion was come to, to have an inclosed sewer constructed.

The width of the ditch through the meadows was from six to eight feet. Mr. Duggan erected his tannery on the meadows, in the vicinity of the present southwest, corner of Broadway and Canal street. His residence occupied a site at about the present line of Lispenard street.

PROGRESS OF THE CITY IN THE EARLY PART OF THE LAST CENTURY

Plate Seventeen

The property between the present Broadway and Pearl street, on the west and east sides, and between Maiden lane and near the present line of Fulton street, on the south and north sides, was then in fields, and embraced two estates; one commonly called "The Shoemakers' Land," and the other, "Vandercliff's Orchard."

The "Shoemakers' Land was bounded very nearly by the present Maiden lane, Ann street, Broadway, and a line on the east, between William and Gold streets. The origin of the name by which it was thus commonly distinguished, arose from the circumstance previously referred to; that an exclusion of all tan-pits from within the limits of the city was ordered, by reason of which the settlement of tanners and shoemakers, who had almost exclusively occupied the old swamp grounds along the present Broad street, above Beaver street, were driven to other quarters, and seeking the nearest convenient locality, beyond the city walls, established their tan-pits along Maiden lane, which was a marshy valley. An association of four shoemakers (at that time tanning their own leather,) purchased the property now referred to, and carried on their trade in this vicinity. The increasing extent of the city calling for a survey and division of these lands; into town lots, a map was made, of which the following is a copy:

The price of lots on this tract, from the year 1700 to 1720, averaged about thirty pounds of the currency of that day. The tanners subsequently removed their business to the borders of the Fresh Water Pond, north of the present Park, and to Beekman's Swamp.

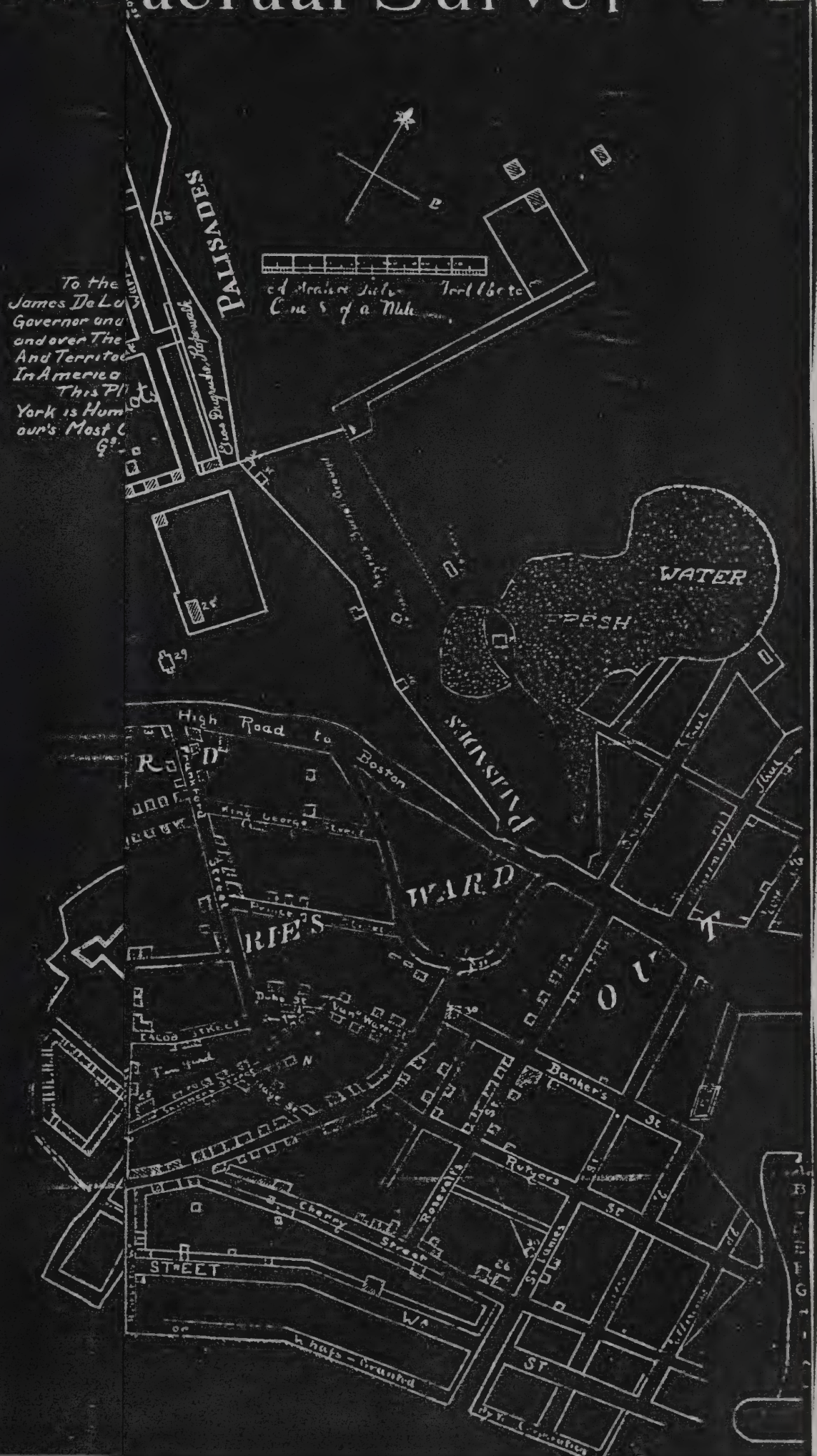
The "Vandercliff Farm," which lay between the Shoemakers' Pasture and the road along the East river (now Pearl street,) and south of the present Beekman street, nearly to Maiden lane, came, at an early period, into the

K from an actual Survey Anno Dommi MDCCLV

By F. Maerschalck City SURVEYOR

ED HOLLAND Esq
MAYOR

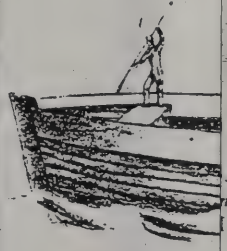
Pla actual Survey A



Plan of the City of New York from an actual Survey

A

Read on the hearing
Jan 20th 1847
R.E Clk.
To the Honourable
James De Lancey Esq. Lieutenant
Governor and Commander in Chief in
and over The Province of New York
And Territories Depending Thereon
In America
This Plan of the City of New
York is Humbly Dedic by Your Hon-
our's Most Obedt Humble Servant
Gr. Duyckinck.
North River
PALISADES
Common
WATER
FRESH
PALISADES
WARD
WARD
WARD
WARD
WARD
WARD
SOUTH
EAST
MONTGOMERIE
Dock
Dock Street
Hunter's Key
Burnet's Key
WATER
STREET
Broad
Broadway
Chatham
Pearl
Chapel
Church
Murray
Cortlandt
Liberty
Cedar
Pine
Maiden Lane
Fulton
Ann
Nassau
Wall
Beekman
Frankfort
Spruce
Ann
Duane
Reade
Chambers
Warren
Chambers
Leonard
Franklin
Hudson
Varick
Canal
Grand
Broome
Delancey
Rivington
Stanton
Houston
Bleecker
Bleecker
Bleecker



John Fitch B
nest an apprenti
at 3000 doll.s all
Lieutenant in th
to another throug
thus obtained his
country of which
an extensive sale. H
the Delaware mad
and traveled thro
anticipated, becau
to Boston, from the
remained some ti

M.r John Hutchi
Sir
I have a perfect
screw Propeller w
I am certain that i

New York, July 3

This is to Certif
of Williamsburg
for truth & verac

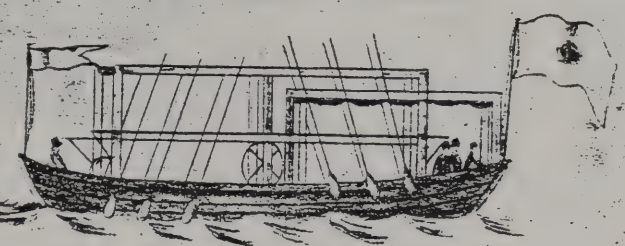
Richard

Residence 178 Pra
of the first Methodist
been a Respectable mer
commencement in th

To M.r John Hutchi
Dear Sir,
It affords me m
a Boat, being prop
as exhibited on ya
there shewn, and

State of New York
City and County

John Fitch's First Boat Perseverance



as seen on the Delaware Phil.a 1785. Speed 7 miles an hour.

REMARKS.— In the Summer of 1796 or 7 M.r Hutchings, then a lad, assisted M.r Fitch in steering the boat, and otherwise attending to the working of the Machinery. At that time Robert R. Livingston Esq. and Robert Fulton with M.r Fitch and the lad Hutchings, worked or passed several times around the pond on different occasions, while M.r Fitch explained to Livingston & Fulton the Modus Operandi of the Machinery. M.r Fitch having a patent for his invention from the State of N.Y. I believe M.r Fitch to have been the original inventor of the application of steam to boats as a propelling power and likewise, the two persons represented in the drawing (drawn in black) to have been Robert R. Livingston Esq.r and Robert Fulton. I being a lad had conversation only with M.r Fitch. From hearsay I believe Colonel Stevens of Hoboken, N. Jersey, and another person by the name of Roosevelt had some knowledge of the enterprise and felt an interest in its success. In conversation M.r Fitch remarked to M.r Fulton that in a former experiment paddle wheels splashed too much and could not be used in Canal Navigation. No one in that time, thought of having them covered with boxes. They had no doubt but the boat might be propelled 6 Miles per hour (though then making something less.) The steam was sufficiently high to propel the boat once, twice or thrice around the pond, when more water being introduced into the boiler (or pot) and Steam generated. She was again ready to start on another expedition.

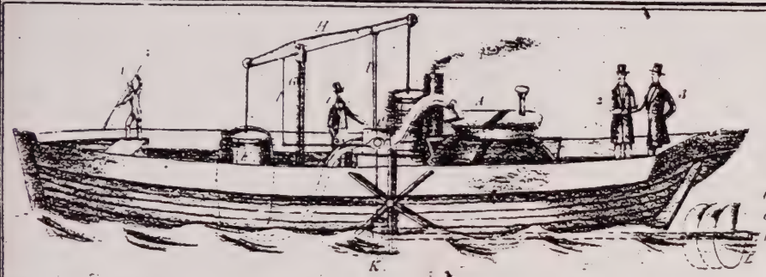
DESCRIPTION.— The boat was a common long boat, or lard about 18 ft. in length and 6 ft. beam, with square stern and round bows, with seats. She was steered at the bow with a small oar when the propeller was used.

The boiler was a 10 or 12 gallon iron pot with a lid of thick plate firmly fastened to it by an iron bar, placed transverse. The Cylinders were of wood barrel shaped on the outside and straight on the inside, strongly hooped. The main steam pipe led directly from the boiler to a copper box (about 18 inches square) or valve box. The leading pipes led separately into the bottom of the base. The one short cylinder F and longer one E.F. seperate cylinders and each paddle rod, was attached to the extremities of the working beam. This beam was supported by an iron upright. The connecting rod was so arranged as to turn the crank of the propelling shaft which passed horizontally through the stern of the boat and was made fast to the propeller or screw as at B. The valves were worked by a simple contrivance attached likewise to the working beams as will be easily seen and understood by reference to the attached perspective drawing.

A. Boiler. B. Main pipe. C. Valve box. D. Smoke pipe. E. Cylinder. F. d.o G. Supporter of beam. I. Connecting rod. J. valve rod. K. Crank. L. Screw propeller. 1. M.r Fitch. 2. M.r Fulton. 3. R. R. Livingston Esq.r 4. Lad Hutchings.

The boat together with a portion of its machinery was abandoned by M.r Fitch, and left to decay on the muddy shore of the Collect Pond and was carried away piece by piece by the children of the neighbourhood for fuel. In the Autumn M.r Fitch left New York for Kentucky, being forced to go by his pecuniary and domestic troubles. Having made his last succesful effort, to succeed in this glorious enterprise of Steam Navigation.

John Fitch died in Kentucky in the year 1798, and if he or R. Fulton had written their own history, I have no doubt, either one or both of them would have left some account of the transaction as related here by me, but finding no account of it in the history of either, I have given as exact an account of it as I possibly can. Having often spoken of it, I do believe my memory



John Fitch Born in Conn.t 21.st of June 1743. First we find him a farmers boy, next an apprentice to a Watch-maker, then in a store at Trenton N.J with a stock valued at 5000 doll.s all of which was destroyed, when the British took Trenton next a Lieutenant in the Army, taken prisoner by the Indians, and sold from one tribe to another through the N.W. Territory, until he was purchased by an Englishman and thus obtained his freedom. During this time he became acquainted with that part of the country of which he made a map, and although printed on a common Cider press it had an extensive sale. He was then a Surveyor in Kentucky, then a Civil Engineer in P.a and on the Delaware made his first experiment of a Steam-Boat with Paddles, he then left America, and traveled through France and England, but not meeting with the encouragement anticipated, became poor and returned home, working his passage as a common sailor to Boston, from there to his native town in Connecticut, thence to New York, where he remained some time, then back to Kentucky where he died in 1798.

M.r John Hutchings

Sir

I have a perfect recollection of having seen a Boat on the Collect Pond in this City with a screw Propeller in the Stern driven by Steam across the Pond. I do not recollect the year but I am certain that it was as early as 1796, it was about the size of a Ships yawl.

I am Sir Respectfully
yours &c

New York, July 3.d 1846

Anthony Lamb

Residence Albany Place
City N. York

This is to Certify, that we have Personally known M.r John Hutchings of the Village of Williamsburg for the last Forty years past, and have the utmost confidence in him for truth & veracity

New York, Oct.r 10.th 1846

Richard Leaycraft

Residence 178 Franklin st. City N.Y. was a member of the first Methodist Class in the City of N.Y. and has been a Respectable member of the M.E. Church from its commencement in the U.S.

Abram C. Halsted

Senior Partner of the Firm of Halsted, Haines & Co. N.o 31 Nassau St. N.Y. Family Residence Orange N. Jersey.

New York, July 3.d 1846.

To M.r John Hutchings

Dear Sir.

It affords me much pleasure, to state that I was an eye witness to the circumstance of a Boat, being propelled be Steam on the Collect Pond in this City about the Year 1796 as exhibited on your Map and that I have a perfect recollection of all these Localities as there shewn, and you are perfectly welcome to use my name in connection with it.

Yours
Wm H Mitchell
City Surveyor

State of New York
City and County of New York }

"HONOR TO WHOM HONOR IS DUE"

ORIGIN OF STEAM NAVIGATION.

A VIEW OF COLLECT POND AND ITS VICINITY

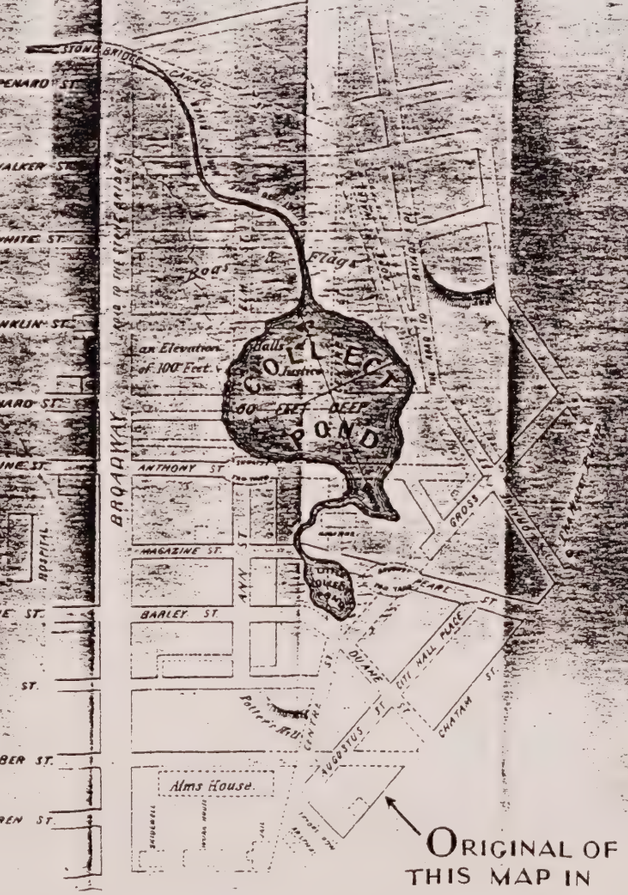
in the City of New York in 1795.

On which Pond, the first boat propelled by Steam with paddle wheels or screw propellers was constructed by John Fitch, six years before Robert Fulton made trial of his boat upon the River Seine, in France and ten years prior to his putting into opperation his boat Clermont in New York: with a representation of the boat and its machinery, on the Collect pond

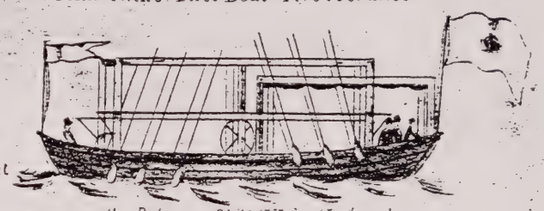
BY JOHN HUTCHINGS

N.o 3 Wesley Place, Williamsburgh, L. Island.

1846.



John Fitch's First Boat Perseverance



as seen on the Delaware Phil.a 1787 Speed 7 miles an hour.

REMARKS. In the Summer of 1796 or 7 M.r Hutchings, then a lad, assisted M.r Fitch in steering the boat, and otherwise attending to the working of the Machinery. At that time Robert R. Livingston, Esq. and Robert Fulton with M.r Fitch and the lad Hutchings, worked or passed several times around the pond on different occasions, while M.r Fitch explained to Livingston & Fulton the Modus Operandi of the Machinery. M.r Fitch having a patent for his invention from the State of N.Y. I believe M.r Fitch to have been the original inventor of the application of steam to boats as a propelling power and likewise, the two persons represented in the drawing (toward in back) to have been Robert R. Livingston Esq. and Robert Fulton. I being a lad had conversation only with M.r Fitch. From hearsay I believe Colonel Stevens of Hoboken, N. Jersey, and another person by the name of Roosevelt had some knowledge of the enterprise, and felt an interest in its success. In conversation M.r Fitch remarked to M.r Fulton that in a former experiment paddle wheels splashed too much and could not be used in Canal Navigation. No one in that time, thought of having them covered with boxes. They had no doubt, but the boat might be propelled 6 miles per hour, though then, making something less. The steam was sufficiently high to propel the boat, and force it round the pond, when more water being introduced into the boiler for use, and Steam generated. She was again ready to start on another expedition.

DESCRIPTION. The boat was a common long boat, or lawn about 18 ft. in length, and 6 ft. beam, with a square stern, and round bows, with oars. She was steered at the bow with a small oar when the propeller was used. The boiler was a 10 or 12 gallon kettle, with a lid of think plate firmly fastened to it by an iron bar, placed transverse. The Cylinders were of wood, barrel shaped on the outside and straight on the inside, trough shaped. The steam pipe led directly from the boiler to a copper box, [illegible] or valve box. The leading pipes led separately, into the bottom of the two Cylinders. The one short cylinder F and longer one E.F. separate cylinders, and each piston rod, was attached to the extremities of the working beams. These beams were supported by an iron upright, the connecting rod was so arranged as to turn the cranks of the propelling shaft which passed horizontally through the stern of the boat and was made fast to the propeller or screw as at L. The valves were worked by a simple contrivance attached likewise to the working beams as well as many others, and understood by refference to the attached perspective drawing.

A. Boiler B. Steam pipe C. Valve box D. Smoke pipe E. Cylinder F. & G. Supporter of beams I. Connecting rod J. valve rod K. Crank L. Screw propeller
1. M.r Fitch. 2. M.r Fulton. 3. R.t R. Livingston Esq. 4. Lad Hutchings.

The boat together with a portion of its machinery was abandoned by M.r Fitch, and left to decay on the muddy shore of the Collect Pond and was carried away piece by piece by the children of the neighbourhood for fuel. In the Autumn M.r Fitch left New York for Kentucky, being forced to go by his pecuniary and domestic troubles. Having made his last successful effort, to succeed in this glorious enterprise of Steam Navigation.

John Fitch died in Kentucky in the year 1798, and if he or R. Fulton had written their own history, I have no doubt, either one or both of them would have left some account of the transaction as related here by me, but finding no account of it in the history of either, I have given as exact an account of it as I possibly can. Having often spoken of it, I do believe my memory

Machinery. At that time Robert R. Livingston Esq. and Robert Fulton with Mr. Fitch and the lad Hutchings, worked or passed several times around the pond on different occasions, while Mr. Fitch explained to Livingston & Fulton the Modus Operandi of the Machinery Mr. Fitch having a patent for his invention from the State of N.Y. I believe Mr. Fitch to have been the original inventor of the application of steam to boats as a propelling power and likewise, the two persons represented in the drawing (dressed in black) to have been Robert R. Livingston Esq. and Robert Fulton. I being a lad had conversation only with Mr. Fitch. From hearsay, I believe Colonel Stevens of Hoboken, N. Jersey, and another person by the name of Rosevelt had some knowledge of the enterprise and felt an interest in its success. In conversation Mr. Fitch remarked to Mr. Fulton that in a former experiment paddle wheels splashed too much and could not be used in Canal Navigation. No one in that time, thought of having them covered with boxes. They had no doubt, but the boat might be propelled 6 Miles per hour, though then making something less.) The steam was sufficiently high to propel the boat once, twice or thrice around the pond, when more water being introduced into the boiler (or pot) and Steam generated She was again ready to start on another expedition.

DESCRIPTION. The boat was a common long boat, or Yawl, about 18 ft. in length and 6 ft. beam, with square stern, and round bows, with seats. She was steered at the bow with a small oar when the propeller was used.

The boiler was a 10 or 12 gallon iron pot, with a lid of thick plank, firmly fastened to it by an iron bar, placed transversely. The Cylinders were of wood, barrel shaped on the outside and straight on the inside, strongly hooped. The main steam pipe led directly from the boiler top into a copper box, (about 6 inches square) receiver or valve box. The leading pipes led separately into the bottom or base (The one short cylinder F and longer one E) seperate cylinders and each piston rod was attached to the extremities of the working beam. This beam was supported by an iron upright, the connecting rod was so arranged as to turn the crank of the propelling shaft which passed horrizontally through the stern of the boat and was made fast to the propeller or screw as at L. The valves were worked by a simple contrivance attached likewise to the working beam as will be easily seen and understood by refference to the attached perspective drawing.

A. Boiler B. Maine pipe C. Valve box D. Smoke pipe E. Cylinder F. d° G. Supporter of beam I. Connecting rod J. valve rod K. Crank L. Screw propeller. N°1. Mr. Fitch, 2. Mr. Fulton, 3. R. R. Livingston Esq. 4. Lad Hutchings.

The boat together with a portion of its machinery was abandoned by Mr. Fitch, and left to decay on the muddy shore of the Collect Pond, and was carried away piece by piece by the children of the neighbourhood for fuel. In the Autumn Mr. Fitch left New York for Kentucky, being forced to go by his pecuniary and domestic troubles. Having made his last successful effort, to succeed in this glorious enterprise of Steam Navigation.

John Fitch died in Kentucky in the year 1798, and if he or R. Fulton had written their own history, I have no doubt, either one or both of them would have left some account of the transaction as related here by me, but finding no account of it in the history of either, I have given as exact an account of it as I possibly can. Having often spoken of it, I do believe my memory to be perfectly correct. If his country had furnished J. Fitch the means, we should have been blessed with Steam Navigation, ten or fifteen years sooner than we were

John Hutchings.

The progress of Steam Navigation from that date to the present period is such that nearly all Navigable waters on the face of the Globe have Steam boats on them, thus fulfilling Fitch's prediction in a letter to Franklin dated Oct. 12th 1785.

Charles Browne built the Clermont for Livingston & Fulton in 1806 and the machinery came from England. James P. Allaire who is now, and has been manufacturing machinery for Steam boats, did the brass and ornamental Work for the Boat, as I was repeatedly on board the boat and Fulton was present and I then believed him to be the same man that was with us on the Collect in 1796 or 97. The Clermont left the wharf at Corlears Hook & made in speed from 4 to 5 miles an hour 1807.

GINAL OF
MAP IN
SSION OF
UTHOR

t Boat
1797-8

F JOHN FITCH, OF EAST WINDSOR, CONN.

acter of Robert R. Livingston Esq. Chancellor of the State of New York.

rict Court of the Southern District of N.Y

Lieutenant in the Army, taken prisoner by the Indians, and sold from one tribe to another through the N.W. Territory, until he was purchased by an Englishman and thus obtained his freedom. During this time he became acquainted with that part of the country of which he made a map, and although printed on a common Cider press it had an extensive sale. He was then a Surveyor in Kentucky, then a Civil Engineer in Pa and on the Delaware made his first experiment of a Steam-Boat with Paddles, he then left America, and traveled through France and England, but not meeting with the encouragement anticipated, became poor and returned home, working his passage as a common sailor in Boston, from there to his native town in Connecticut, thence to New York, where he remained some time, then back to Kentucky where he died in 1798.

Mr. John Hutchings

Sir

I have a perfect recollection of having seen a Boat on the Collect Pond in this City with a screw Propeller in the Stern driven by Steam across the Pond. I do not recollect the year but I am certain that it was as early as 1796, it was about the size of a Ships yawl.

I am Sir Respectfully yours &c

New York, July 3rd 1846.

Anthony Lamb

Residence Albany Place City N. York

This is to Certify, that we have Personally known Mr. John Hutchings of the Village of Williamsburg for the last Forty years past, and have the utmost confidence in him for truth & veracity

New York, Oct. 10th 1846

Richard Leacraft

Abram C. Halsted

Residence 178 Franklin st. City N.Y. was a member of the first Methodist Class in the City of N.Y. and has been a Respectable member of the M.E. Church from its commencement in the U.S.

Senior Partner of the Firm of Halsted Haines & Co. No. 31 Nassau St. N.Y. Family Residence Orange N. Jersey.

New York, July 3rd 1846.

To Mr. John Hutchings

Dear Sir,

It affords me much pleasure, to state that I was an eye witness to the circumstance of a Boat, being propelled be Steam on the Collect Pond in this City about the Year 1796 as exhibited on your Map and that I have a perfect recollection of all those Localities as there shewn, and you are perfectly welcome to use my name in connection with it.

Yours

Wm. H. Mustoe

City Surveyor

State of New York

City and County of New York Ss

John Hutchings of Williamsburgh L.I. being duly Sworn deposeth and saith that the facts set forth in the foregoing remarks and description by him, subscribed are correct to the best of this deponents remembrance and belief

Sworn before me this First day of December 1846

John Hutchings

Thomas S. Henry

Com. of Deeds &c.

S. S. 1797-8 When his health would allow of moderate exercise, he wrought upon a model Boat about three feet in length, at the shop of Mr. Howell. Its machinery was constructed of brass. This model Boat had wheels, and has been seen floating in a small stream near the Village by persons now living. It was burnt in Mr. Cowin's tavern in 1805 Nelson Co. Kentucky.

(Sparks' American Biography)
New Series Vol. 17.

Census of the City New York
Periods

1691	4303
1698	5000
1756	13040
1771	21463
1790	33131
1800	60489
1810	96373
1820	123709
1825	166086
1830	203365
1835	249673
1840	312710
1845	371703

The Model Boat at Bordentown 1797-8

Machinery. At that time Robert R. Livingston Esq. and Robert Fulton with Mr. Fitch and the lad Hutchings, worked or passed several times around the pond on different occasions, while Mr. Fitch explained to Livingston & Fulton the Modus Operandi of the Machinery. Mr. Fitch having a patent for his invention from the State of N.Y. I believe Mr. Fitch to have been the original inventor of the application of steam to boats as a propelling power and likewise, the two persons represented in the drawing (coloured in black) to have been Robert R. Livingston Esq. and Robert Fulton. I being a lad had conversation only with Mr. Fitch. From hearsay, I believe Colonel Stevens of Hoboken, N. Jersey, and another person by the name of Roosevelt had some knowledge of the enterprise and felt an interest in its success. In conversation Mr. Fitch remarked to Mr. Fulton that in a former experiment paddle wheels splished too much and could not be used in Canal Navigation. No one in that time, thought of having them covered with boxes. They had no doubt, but the boat might be propelled 6 Miles per hour, (though then making something less.) The steam was sufficiently high to propel the boat once, twice or thrice around the pond, when more water being introduced into the boiler (or pot) and Steam generated. She was again ready to start on another expedition.

DESCRIPTION. The boat was a common long boat, or Yawl, about 18 ft. in length and 6 ft. beam, with square stern, and round bows, with seats. She was steered at the bow with a small oar when the propeller was used.

The boiler was a 10 or 12 gallon iron pot, with a lid of thick plank firmly fastened to it by an iron bar, placed transversely. The Cylinders were of wood barrel shaped on the outside and straight on the inside, strongly hooped. The main steam pipe led directly from the boiler top into a copper box, (about 8 inches square) receiver or valve box. The leading pipes led seperately into the bottom or base (The one short cylinder F and longer one E) represent cylinders and each piston rod was attached to the extremities of the working beam. This beam was supported by an iron upright the connecting rod was so arranged as to turn the crank of the propelling shaft which passed horrizontally through the stern of the boat and was made fast to the propeller or screw as at L. The valves were worked by a simple contrivance, attached likenese to the working beam as will be easily seen and understood by refference to the attached perspective drawing.

A. Boiler B. Maine pipe C. Valve box D. Smoke pipe E. Cylinder F. do. G. Supporter of beam J. Connecting rod. J. valve rod. K. Crank L. Screw propeller. No. 1. Mr. Fitch. 2. Mr. Fulton. 3. R.R. Livingston Esq. 4. Lad Hutchings.

The boat together with a portion of its machinery was abandoned by Mr. Fitch, and left to decay on the muddy shore of the Collect Pond, and was carried away piece by piece by the children of the neighbourhood for fuel. In the Autumn Mr. Fitch left New York for Kentucky, being forced to go by his pecuniary and domestic troubles. Having made his last succesful effort, to succeed in this glorious enterprise of Steam Navigation.

John Fitch died in Kentucky in the year 1798, and if he or R. Fulton had written their own history, I have no doubt, either one or both of them would have left some account of the transaction as related here by me, but finding no account of it in the history of either, I have given as exact an account of it as I possibly can. Having often spoken of it, I do believe my memory to be perfectly correct. If his country had furnished J. Fitch the means, we should have been blessed with Steam Navigation, ten or fifteen years sooner than we were.

John Hutchings.

The progress of Steam Navigation from that date to the present period is such that nearly all Navigable waters on the face of the Globe have Steam boats on them, thus fulfilling Fitch's prediction in a letter to Franklin dated Oct. 12th 1785.

Charles Browne built the Clermont for Livingston & Fulton in 1806 and the machinery came from England. James P. Allaire who is now, and has been manufacturing machinery for Steam boats, did the brass and ornamental Work for the Boat, as I was repeatedly on board the boat and Fulton was present and I then believed him to be the same man that was with us on the Collect in 1796 or 97. The Clermont left the wharf at Corlears Hook & made in speed from 4 to 5 miles an hour 1807.

THE WORLD IS INDEBTED FOR THE ORIGINAL IDEA AND TO THE MECHANICAL GENIUS OF JOHN FITCH, OF EAST WINDSOR, CONN.

And to the perseverance and indefatigable attention to the use of Steam of Robert Fulton Esq. Pa. The wealth & exalted character of Robert R. Livingston Esq. Chancellor of the State of New York.

Entered according to act of Congress in the year 1846 by JOHN HUTCHINGS in the Clerk's Office of the District Court of the Southern District of N.Y.

possession of Henry Rycken, a blacksmith, who, in the year 1681, sold it to Dirck Vandercliff who resided on the property until his death. His widow, Geesie, caused it to be divided into lots, for sale, the average prices being form twenty to thirty pounds. The streets laid out through the property were originally named as follows: Cliff street, South street, Golden street, and Rudder street.

On the west side of Broadway, above Trinity Church, the principal building was the King's Arms Tavern, on the site of the old City Hotel viz: between Thames and Liberty streets.) This building was erected, about the close of the seventeenth century, by John Hutchins, who had formerly kept the tavern on the south-west corner of the present Wall and Broad streets, opposite the old city-hall. The tavern of Hutchins was the most fashionable public house of the city, and was the head-quarters of the anti-Leislerian party of that day; it having been built principally through the loans of Nicholas Bayard, and a few other leaders of that political sect. The grounds of the tavern were extensive, running down to the North river shore, and having also a garden plot on each side of the house. The building itself was not of great size; upon the roof was a balcony, arranged with seats, and commanding a beautiful view of the bay and environs of the city.

North of the tavern a few scattered buildings were situated, on the west side of Broadway, the principal of which was the store of Alderman Jacob Boelen, north of Liberty street. The present Cortland street—which took its name from the proprietor, it being a part of the estate of Burgomaster Van Cortland—was not yet opened, although preparations were being now made for that purpose; the same may be said of the present Dey street, the name of which was derived from Teunis Dey, an owner of property in that vicinity. Mr. Dey's property was three hundred and nine feet front on Broadway, and about eight hundred feet in depth to Hudson river, containing about five and a half acres; beyond this lay the "King's Farm," a large estate, so called, which had, upon the first settlement of the island by the Dutch, been set apart for the uses of the West India Company, then the proprietaries of the island. It is supposed to have been confiscated by the English, upon taking the city, and to have been appropriated to the conquerors. The title, at the period here referred to, was in Trinity Church, which corporation began, about the year 1720, to lay out the south part of the farm into lots. At that time the extent of Broadway was to its junction with Chatham street, the road continuing on the line of the latter street. It was in contemplation, however, to extend Broadway, in a straight line, through the commons along the fence of the King's Farm, which was bordered by a fine row of trees, on the present west side of Broadway. On the line of Broadway, at the lower end of the common, was a rope-walk, erected by Dugdale and Searle, by permission of the corporation, which occupied that place for more than twenty years. The streets laid out in the King's Farm, extending from Fulton to Chambers street, were named after leading officers of Trinity Church. Vesey street was so called, after the Rev. William Vesey, rector of Trinity Church; Barclay street, after the Rev. Mr. Barclay, who succeeded Mr. Vesey as rector; Robinson street, after a leading citizen; Murray street, after a distinguished lawyer of this city, and one of the officers of the church; Warren street, after Sir Peter Warren, commander of the British naval forces at this station, who married Miss Delancey, of this city, and resided here for many years; Chambers street, after John Chambers, Esq., a lawyer born in this city, and for many years a leading citizen in civil and church affairs.

The **Commons** of this city originally formed nearly a square, lying generally between the present Broadway and Nassau streets on the east and west, and between Ann and Chambers streets north and south. It was traversed diagonally by Chatham street, then the post-road; thus forming a triangle on the east side, a part of which was appropriated by Colonel Dongan (governor in 1686,) and was occupied for many years as a place of amusement, and called the Vineyard. The Commons, now inclosed as the Park, was a waste and open place; it was sometimes called, even in the last century, the **Vlackte**, or "Flat." The historical reminiscences connected with this public place, now some miles within the outskirts of the city, but once the pasture grounds to which the morning and evening droves, from the village of New Amsterdam, pursued their daily peregrinations, are interesting to the observer of ancient memorials. It was here that the impetuous Dutch troops, under Anthony Colve, having landed from the ships in the North river, formed in military array, preparatory to their charge down Broadway, upon the English in the fort, opposite the Bowling Green. It was here the conferences between the Dutch officers and the commissioners, sent out by Manning to treat of terms, were held and where the Dutch, disgusted with the prevarication of the English, and eager for the assault, cried "They shall fool us no more—march!" It was here that the scenes of festivity and frolic were commonly enacted, on occasions where a crowd was congregated. Five times in each year a public bonfire was lighted up in the evening, at the expense of the city authorities, to celebrate their holidays; these stated evenings were the 5th of November, the 6th of February, the 8th of March and 13th of April; the first anniversary being that of the gunpowder plot, which was a stated occurrence; the other anniversaries were the king's birthday, the coronation, &c., &c., and varied under different monarchs. On these occasions wine was freely distributed to the people, at public expense, the general cost to the authorities, of one of these entertainments, averaging fifteen pounds. The citizens also contributed to the display by throwing fire-balls, burning tar barrels, &c. The Commons was, for many years, the place of public execution, a gallows standing permanently, not far from the present Hall of Records. The first public building erected on the Commons was a powder-house, built on the present site of the Hall of Records, and then considered so remote from neighbors as to cause no fears of damage in case of explosion; it was subsequently, however, removed, in the year 1728, to a small island in the Fresh Water Pond. The first poor-house erected in this city, was in the year 1734. Previously to that period the paupers in the town were generally dependent upon private charity, although, in cases of great necessity, the city authorities dispensed some provision by special resolution. At the period referred to, however, an ordinance was passed, reciting that "Whereas the number and increase of the poor in this city is very great, and there has not yet been any provision made for the relief and setting on work of poor needy persons and idle vagabonds, sturdy beggars and others, who frequently commit great depredations, and having lived idly, become debauched and thievish. For a remedy it is ordered that there be built a good, convenient house, on part of the unimproved lands of the corporation, on north side of the lands, late of Colonel Dongan, commonly called the Vineyard; the house to be fifty-six feet long, twenty-four wide, and two stories high, with a cellar. The location of this building was afterward established on the Commons, on a part of the site of the "Old Alms House," in the rear of the city-hall, now occupied by the various courts. The house was furnished

with four spinning-wheels, some leather and tools for shoemaking, knitting-needles, flax, &c., for the employment of the inmates. In the year 1742, Joseph Paulding leased a part of the Commons, and established a large brick kiln.

North of the Commons lay the Fresh Water Pond. This, however, was not the original name of the pond itself, but was given, in the times of the Dutch, to a point of land on the shore of the pond, the site of an old Indian village. The Kalck-hock point contained about forty-eight acres of land. As to the value of property in this vicinity, at the beginning of the last century, we may instance that a part of it containing about eleven acres was sold, in the year 1703, for about one hundred pounds of the currency of that day, or less than twenty-five dollars per acre. The Fresh Water Pond was, in some places, very deep, and had the common reputation of having no bottom, a fallacy which was sufficiently determined by filling in its basin, and establishing the streets which now cross its ancient site. In early times this pond was the resort of the angler, and contained an abundance of fish. As late as the year 1734, by the desire of several citizens, a law was passed by the common council "for preserving the fish in Fresh Water Pond;" imposing a fine upon any person casting his net therein, or catching fish there by any other manner than that of angling. When, by the progress of the city, the tanners were driven from their ancient localities, in Broad street and Maiden lane, tan-pits were established on the borders of this pond, and remained there for many years. In the year 1732, Mr. Anthony Rutgers, having in view the prospective value of property on the confines of the town, made a purchase of the swamp through which one of the streams ran from this pond and emptied into the North river.

In the gradual progress of improvement in the first half of the last century, the property of Mr. Beekman, which lay south of the region now known as the "swamp," in the vicinity of Ferry and the neighboring streets, and embraced the blocks between the present Nassau and Pearl streets, on the east and west, and from Fulton, on the south, to the swamp, which furnished its northern boundary, came into requisition for building purposes, and was laid off into lots, the present Beekman street running through the property. The swamp itself was originally a low ground, covered by bushes, and was known in early times as the "Kripple-bush," or tangled briars. This place, containing several acres, was sold, about the year 1734, to Jacobus Roosevelt, for the sum of two hundred pounds. The grant was from the corporation, who claimed title to it although they refused to give a warranty deed, as the heirs of Jacob Leisler—who had received a patent for land north of the present Spruce street, and bordering upon the swamp—claimed the property as coming within their patent, a claim which, we believe, was never satisfactorily adjusted. Mr. Roosevelt, however, laid off the property into about fifty lots, and it became the seat of several tanneries, and still monopolizes the leather business of the city.

While noticing the progress of the city in its upper section, we may observe that the high road on the present line of Pearl street, between Franklin square and Chatham street, which had been early established through open lands, without much regard to specific boundaries, was regulated and established as a road, on its present lines, in the year 1735.

* * * * * * * * * *

We find a few sentences descriptive of the commercial condition of the city at that period, in the reports of the governors to their superiors in England. Governor Andros, in 1678, says:—"Our principal places of trade are New York and South'ton, except Albany, for the Indians; our buildings most wood, some lately stone and brick; good country houses, and strong of their severall kindes. A merchant worth £1000 or £500 is accoumpted a good substantiall merchant, and a planter worthe halfe that in moveables, accoumpted rich; all estates may be valued att about £150,000; there may lately have traded to ye colony in a yeare, from tenn to fifteen ships or vessells of about togeather 100 tunns each, English, New England, and oure own built, of which five small shipps and a ketch now belonging to New Yorke, foure of them built there."

Governor Dongan, in 1687, says:—"New York and Albany live wholly upon the trade with the Indians, England and the West Indies; the returns for England, are generally beaver, peltry, oile, and tobacco, when we can have it; to the West Indies we send flower, bread, pease, pork and sometimes horses; there are about nine or ten three mast vessels of about 80 or 100 tons burthen, two or three ketches of about 20 or 25 tons, belonging to the government, all of which trade for England, Holland, and the West Indies, except six or seven sloops that use the river trade to Albany and that way."

In 1674, at the time of the cession of the territory to the English, the city contained a population of about 3,000.

In 1678, the population was 3,430; an increase of about 400 in three years, or 130 per annum.

In 1703, the population was 4,436; an increase of about 1,000 in twenty-five years, or 40 per annum.

In 1712, the population was 5,840; an increase of about 1,400 in nine years, or 150 per annum.

In 1723, the population was 7,248; an increase of about 1,400 in eleven years, or 130 per annum.

In 1731, the population was 8,622; being an increase of about 1,400 in eight years, or 175 per annum.

In 1737, the population was 10,664; being an increase of about 2,000 in six years, or 330 per annum.

In 1746, the population was 11,717; being an increase of about 1,000 in nine years, or 110 per annum.

In 1756, the population was 13,040; being an increase of about 1,300 in ten years, or 130 per annum.

In 1771, the population was 21,863; being an increase of about 8,800 in fifteen years, or 600 per annum. (The garrison contained at this period a large number of soldiers in anticipation of American troubles.)

In 1786, after the close of the revolution, the city contained 23,614 inhabitants; being an increase of about 2,000 in fifteen years, or 130 per annum.

The whole increase of the city during the century of English domination, did not exceed 20,000, a number considerably less than is now added to its population every year, and an increase which seems at the present day vastly disproportionate to the commercial and agricultural advantages of the city and province, under the auspices of Great Britain. But if we consider the restrictions thrown by the mother country around her colonies, we shall be less surprised at the disproportion between the past and the present. As early as 1705 we find Governor Cornbury writing from New York to his superiors at home in such terms as these. "I hope I may be pardoned if I declare my opinion to be that all these colloneys which are but twigs belonging to the main tree (England) ought to be kept entirely dependent upon and subservient to England, and that can never be if they are suffered to go on in the notions they have that as they are Englishmen so they may set up the same manufactures here as people may do in England."

In conformity with the policy recommended by Governor

PART OF SAME MAP
ENLARGED
Approximate Scale - 20 in = 1 mi.

COUNTY OF NEW YORK
HALL OF RECORDS
OFFICE OF THE CHIEF SURVEYOR
REINDEXING DEPARTMENT

DRAWN BY C.K JULY-1911.

APPROVED
J. L. Seward
CHIEF SURVEYOR.

Plate Nineteen

with four spinning-wheels, some leather and tools for shoemaking, knitting-needles, flax, &c., for the employment of the inmates. In the year 1742, Joseph Paulding leased a part of the Commons, and established a large brick kiln.

North of the Commons lay the Fresh Water Pond. This, however, was not the original name of the pond itself, but was given, in the times of the Dutch, to a point of land on the shore of the pond, the site of an old Indian village. The Kalck-hock point contained about forty-eight acres of land. As to the value of property in this vicinity, at the beginning of the last century, we may instance that a part of it containing about eleven acres was sold, in the year 1703, for about one hundred pounds of the currency of that day, or less than twenty-five dollars per acre. The Fresh Water Pond was, in some places, very deep, and had the common reputation of having no bottom, a fallacy which was sufficiently determined by filling in its basin, and establishing the streets which now cross its ancient site. In early times this pond was the resort of the angler, and contained an abundance of fish. As late as the year 1734, by the desire of several citizens, a law was passed by the common council "for preserving the fish in Fresh Water Pond;" imposing a fine upon any person casting his net therein, or catching fish there by any other manner than that of angling. When, by the progress of the city, the tanners were driven from their ancient localities, in Broad street and Maiden lane, tan-pits were established on the borders of this pond, and remained there for many years. In the year 1732, Mr. Anthony Rutgers, having in view the prospective value of property on the confines of the town, made a purchase of the swamp through which one of the streams ran from this pond and emptied into the North river.

In the gradual progress of improvement in the first half of the last century, the property of Mr. Beekman, which lay south of the region now known as the "swamp," in the vicinity of Ferry and the neighboring streets, and embraced the blocks between the present Nassau and Pearl streets, on the east and west, and from Fulton, on the south, to the swamp, which furnished its northern boundary, came into requisition for building purposes, and was laid off into lots, the present Beekman street running through the property. The swamp itself was originally a low ground, covered by bushes, and was known in early times as the "Kripple-bush," or tangled briars. This place, containing several acres, was sold, about the year 1734, to Jacobus Roosevelt, for the sum of two hundred pounds. The grant was from the corporation, who claimed title to it although they refused to give a warranty deed, as the heirs of Jacob Leisler—who had received a patent for land north of the present Spruce street, and bordering upon the swamp—claimed the property as coming within their patent, a claim which, we believe, was never satisfactorily adjusted. Mr. Roosevelt, however, laid off the property into about fifty lots, and it became the seat of several tanneries, and still monopolizes the leather business of the city.

While noticing the progress of the city in its upper section, we may observe that the high road on the present line of Pearl street, between Franklin square and Chatham street, which had been early established through open lands, without much regard to specific boundaries, was regulated and established as a road, on its present lines, in the year 1735.

* * * * * * * * * *

We find a few sentences descriptive of the commercial condition of the city at that period, in the reports of the governors to their superiors in England. Governor Andros, in 1678, says:—"Our principal places of trade are New York and South'ton, except Albany, for the Indians; our buildings most wood, some lately stone and brick; good country houses, and strong of their severall kindes. A merchant worth £1000 or £500 is accoumpted a good substantiall merchant, and a planter worthe halfe that in moveables, accoumpted rich; all estates may be valued att about £150,000; there may lately have traded to ye colony in a yeare, from tenn to fifteen ships or vessells of about togeather 100 tunns each, English, New England, and oure own built, of which five small shipps and a ketch now belonging to New Yorke, foure of them built there."

Governor Dongan, in 1687, says:—"New York and Albany live wholly upon the trade with the Indians, England and the West Indies; the returns for England, are generally beaver, peltry, oile, and tobacco, when we can have it; to the West Indies we send flower, bread, pease, pork and sometimes horses; there are about nine or ten three mast vessels of about 80 or 100 tons burthen, two or three ketches of about 20 or 25 tons, belonging to the government, all of which trade for England, Holland, and the West Indies, except six or seven sloops that use the river trade to Albany and that way."

In 1674, at the time of the cession of the territory to the English, the city contained a population of about 3,000.

In 1678, the population was 3,430; an increase of about 400 in three years, or 130 per annum.

In 1703, the population was 4,436; an increase of about 1,000 in twenty-five years, or 40 per annum.

In 1712, the population was 5,840; an increase of about 1,400 in nine years, or 150 per annum.

In 1723, the population was 7,248; an increase of about 1,400 in eleven years, or 130 per annum.

In 1731, the population was 8,622; being an increase of about 1,400 in eight years, or 175 per annum.

In 1737, the population was 10,664; being an increase of about 2,000 in six years, or 330 per annum.

In 1746, the population was 11,717; being an increase of about 1,000 in nine years, or 110 per annum.

In 1756, the population was 13,040; being an increase of about 1,300 in ten years, or 130 per annum.

In 1771, the population was 21,863; being an increase of about 8,800 in fifteen years, or 600 per annum. (The garrison contained at this period a large number of soldiers in anticipation of American troubles.)

In 1786, after the close of the revolution, the city contained 23,614 inhabitants; being an increase of about 2,000 in fifteen years, or 130 per annum.

The whole increase of the city during the century of English domination, did not exceed 20,000, a number considerably less than is now added to its population every year, and an increase which seems at the present day vastly disproportionate to the commercial and agricultural advantages of the city and province, under the auspices of Great Britain. But if we consider the restrictions thrown by the mother country around her colonies, we shall be less surprised at the disproportion between the past and the present. As early as 1705 we find Governor Cornbury writing from New York to his superiors at home in such terms as these. "I hope I may be pardoned if I declare my opinion to be that all these colloneys which are but twigs belonging to the main tree (England) ought to be kept entirely dependent upon and subservient to England, and that can never be if they are suffered to go on in the notions they have that as they are Englishmen so they may set up the same manufactures here as people may do in England."

In conformity with the policy recommended by Governor

COUNTY OF NEW YORK
HALL OF RECORDS
OFFICE OF THE CHIEF SURVEYOR
REINDEXING DEPARTMENT
DRAWN BY C.K. JULY-1911.
APPROVED
J. L. Steward
CHIEF SURVEYOR.

Plate Nineteen

Cornbury, the people of new York were not permitted to manufacture clothes of any kind except for their own use; owing to this system however (which was designed in part to instil into the people a sense of dependence upon England for clothing stuffs, and partly to aid British manufactures and commerce,) the people of this colony, particularly in the country, became very generally the weavers of their own clothes called "homespun," an economical as well as retributive practice.

With respect to the condition and appearance of the city under the English dynasty, we shall instance that in 1748, the city of New York was a place of about twelve thousand inhabitants, all lying below the present Park. The streets are said to have been well built, most of them being paved, except in high places, where it had been found useless. In the chief streets there were trees planted, which in summer gave them a fine appearance, and during the hot months afforded a cooling shade. The trees were chiefly of two kinds—the water-beach were the most numerous, and gave an agreeable shade by their large leaves and abundant foliage. The locust tree was likewise common, and was a favorite shade tree in streets and gardens, on account of the oderiferous scent exhaling from it. There were likewise lime trees and elms planted in some parts, but not so numerously as the others.

* * * * * * * * * *

"The city contains between two and three thousand houses, and sixteen or seventeen thousand inhabitants; is tolerably well built, and has several good houses. The streets are paved and very clean, but in general narrow. There are two or three indeed, which are spacious and airy, particularly the Broadway. The houses in this street have mostly a row of trees before them which form an agreeable shade, and have a pretty effect. There are several public buildings, though but few that deserve attention. The College (now Columbia College) when finished, will be exceedingly handsome. It is to be built on three sides of a quadrangle, fronting Hudson or North river, and will be the most beautifully situated of any college I believe in the world.

"More than half the inhabitants of New York are Dutch, and almost all traders; they are therefore habitually frugal, industrious and parsimonious. The women are handsome and agreeable, though rather more reserved than the Philadelphian ladies. Their amusements are much the same as in Pennsylvania, viz., balls and sleighing expeditions in the winter, and in summer going in parties upon the water and fishing, or making excursions into the country. There are several houses pleasantly situated upon the East river, near New York, where it is common to have turtle feasts; these happen once or twice in a week. Thirty or forty gentlemen and ladies meet and dine together, drink tea in the afternoon, fish and amuse themselves till evening, and then return home in Italian chaises (a fashionable carriage in these parts,) a gentleman and lady in each chaise. In the way there is a bridge about three miles distant from New York, which you always pass over as you return, called the Kissing bridge, where it is part of the etiquette, to salute the lady who has put herself under your protection."

* * * * * * * * * *

THE REASONS WHY SOME OF THE STREETS OF NEW YORK WERE CONSTRUCTED ON THEIR PRESENT SITES.

We have heard curiosity often expressed as to the reasons which induced the first founders of our city to lay down the plans of their streets in the irregular manner in which we find them in the lower part of the city. Looking at the city map, it will be observed that there has been no uniform plan of laying out the streets at the time these became peopled, and that local and peculiar influences must have governed them in fixing upon their sites. These influences cannot upon a superficial view of the city at the present time, be ascertained; but by studying the history of the past, and the formation of the probable surface of the country before these streets were built upon, we are able to trace this puzzling problem with a considerable degree of certainty.

We must not suppose that the original founders of this city came hither prepared to lay out a city with respect to uniformity of grade, or that the site of this city was chosen, like that of Philadelphia, with any view before hand, of laying down a city, staked out in regular squares; but the fact must be borne in mind that the original settlers had other influences governing them. They come hither to a country of savages. They found the island a favorable site for trade, and affording natural facilities for security on three sides against an attack of their barbarous neighbors. Hence, they raised their cabins upon the south point of the island, and gradually, with the increase of population, the limits of their settlement expanded.

The formation of the land around their fort was much broken; hills, valleys, ponds, streams and marshes were obstructions to be regarded in settling their thoroughfares; but not then, as now, were these to be overcome by the spade and the wheelbarrow, the pick and the blast. They traversed around obstructions which we of the present day go through.

For the better illustrating our own views, we have p. 358, a ground plan of the lower part of the island, based upon the most authentic data, and with the aid of this, we propose to offer a few suggestions on the origin of some of the streets. (Plate No. 19).

Pearl street.—The crescent, or bow-like, form of this street, appears now to be a puzzling matter of explanation, its end being nearly on the same line from which it starts. This street has in the course of its history been know by several different names, applied to different portions of it, and finally it was given one general cognomen for its whole extent. Originally this street was the one nearest to the shore of the river, and became soon one of the most populous in the city, on account of more business being done on the East river side of the island than on the North river side; a privilege it has inherited almost to the present day, for it is only within a few years that any of our principal merchants and ship owners have established their places of business west of Broadway. The original reason of this business peculiarity, was that the shores of the East river and the make of the ground were less bold and declivitous than on the North river side. Another favorable circumstance to the East river section in business affairs, was the ferry to Long Island, from whence much of the farm produce consumed in the city was brought.

The beginning of Pearl street was a small row of houses then under the walls of the fort, the site of which is now west of Whitehall street, extending thence along the shore, the rear of the gardens of the buildings on the south side being washed by the tide,—the street became built upon as far as Broad street, up which a small creek ran in ancient times. Crossing a bridge there, the continuation along the shore followed naturally with the growing population. It became a high road. It led past Mrs. Van Clyff's farm, her residence being on a bluff near the present junction of John and Pearl streets. Thence it passed Mr. Beekman's farm and orchard, near the street which new bears his name.

Thence it crossed a neck of land, between Beekman's swamp and the river, about the present head of Peck slip; thence it continued to the present site of Franklin square. Here in course of time it became convenient to effect a junction with the high road to Boston (now Chatham street), and the only traversable way was along a ridge which then extended from the top of the hill at Franklin square to the Boston road. Accordingly this was staked out and became a thoroughfare, naturally taking the name of the street from which it ran. Here it would probably have stopped its circuitous course, but it happened that opposite to its junction with the Boston road there came in a lane leading from Broadway also to the Boston road, past a powder house, (then and for a long time standing upon a piece of ground almost insulated by the fresh water pond) the lane became known as Magazine street, but finally, it being the natural continuation of Pearl street, it was adopted as a part of that ancient thoroughfare.

Water street, Front street, South street.—We only need say, with respect to these streets, that they have been successively filled into the East river in the order in which they are here placed.

Marketfield street.—The curious history of this small street is, to our minds, an interesting index to the primitive condition of our city. The market and centre of commerce in our city in the earliest times was the green before the fort, the present site of our Bowling Green. The country people from Long Island were ferried, or ferried themselves at first, to a small inlet at Broad street, and along the shore here the boats securely lay. Marketfield street became the path from the landing-place to the market field. It was known under the Dutch, even after the town had considerably extended itself, as "'T Marckvelt steegie," the Marketfield path or bye-way.

Maiden lane—once called "the green lane," and once also "'t maagde paatje," or "the maid's path." The curious divergence of this street from a parallel to those above and below it—arose from the natural formation of the adjacent country. It certainly was anciently a lane leading from the road at the water side (Pearl street) to the high road to Boston (Broadway), because we find as early as 1661, long before any part above Wall street was built upon, the following question put by the Burgomasters to a man charged with stealing: "Have not you, prisoner, more than a month ago, stolen a quantity of cabbage at the house of a Peter Jansen, ship carpenter, at the entrance of t' maagde paatje, when you were caught and overtaken by the watch?" (Translated.)

It is known that the present Park and some of the adjacent grounds, were originally set apart as a common pasturage for the cattle of the inhabitants, then generally living near the fort or present Battery. The direct road to the common from the fort was that now called Broadway, but as many inhabitants resided along the water side, on the present line of Pearl street, it became desirable to effect a junction with the pasturage by a cross-cut. The only feasible route for this purpose was the valley now called Maiden lane, which then formed a gradual and easy ascent to the principal road. Although the neighboring elevations have since been greatly improved by grading, it will be observed that Maiden lane is still a valley, though hardly to be recognized in the midst of brick and mortar. The early name, "Green lane," "Maids' path," conjure up the idea, the certainty of which we can only surmise, that this lane or road was once not only the evening and the morning path of the heardsman, but was also a pleasant strolling place of the youth of this city, in times past.

Broad street.—In comparison with some of the adjacent streets, Broad street seems of unusual width, the explanation of which is that its site was originally a marshy valley, traversed by a small stream or drain; on both sides of this drain, (which was a convenient harbor for small boats, and therefore carefully preserved,) a row of buildings was erected with sufficient cartways on each side. In after times, when by the construction of docks and wharves this drain became useless as a shelter for boats, it was filled up, leaving the street of its present width.

Beaver street.—The width of this street may be explained in a similar manner. It was in early times known as the "Beaver Canal," a drain branching from the principal one in Broad street, along the centre of this street.

Broadway.—We should probably have had Broadway as crooked as most of the other down-town streets, if nature had not fortuitously provided a ridge of land to start upon which tended in a direct line. The most convenient roadway from the fort to the interior of the island was upon the ridge on which the lower part of Broadway now runs, a slight elevation, however, having to be overcome to get upon it; the width of the ridge, in its natural state being no more for some distance than was necessary for a convenient road. The destination of this thoroughfare was originally to the common pasture lands on the site of and adjacent to the present Park, which was a grazing place for cattle in early times. Up to this point, therefore, there was no necessity for divergence to the right or left, although the Boston highroad led off across the common, (on the present line of Chatham street,) and was laid out about thirty years after the first settlement. Fortunately, perhaps, for the beauty of our city, the necessities of the population did not need the extension of this street beyond the present Park for more than one hundred and fifty years after the first formation of the road to the pasture lands; and at that late period the spirit and wealth of the citizens induced them to carry this thoroughfare through very considerable hills and over deep valleys and marshes, in anticipation of an importance to the street, which has been fully realized, for the Broadway of New York is now celebrated throughout the world.

* * * * * * * * * *

HISTORICAL

REAL ESTATE IN OLDEN TIME

From Valentine's Manual

This interesting topic of local history is none the less curious when we go back into our early annals; for we there find such an apparent obliviousness of the future of the city, that a country-seat, from a mile to three miles from the city, was thought a convenient distance; and to drive the family cow home from pasture, a greater distance than half a mile was unnecessary. Farms lay within a stone's throw of the domiciles of the citizens for a century together; and when, at last, mapped out into lots, would be at first sold perhaps at twenty to fifty dollars each, and at the end of half a century subsequently, might double in value. In those days, trading in lots met but little encouragement, and the industrious farmer could probably, with greater profit, cultivate his farming lands, even within half a mile of the city, then sell them at what they would bring for building lots. As to this, we speak of a period anterior to the middle of the last century. About ten years previous to the Revolutionary war (after the conclusion of the French war, and the conquest of Canada), real estate went up in New York nearly an hundred per cent., and those

who had invested largely in that species of property, such as the Rutgers' family, the Bayards, and others, began to be regarded as far-sighted characters. All around the suburbs, the lands were then mapped into lots, and an era of adventurous operations commenced, in consequence of which many suffered in those days, as in later periods, from too freely partaking of the intoxicating draught of speculation.

The object of this article is to give the early history of such of the different farms and estates, near the city, as were converted into building lots previous to the Revolutionary war, and the value of those lands and lots, as indicated by sales at different periods before that event.

"T'SCHAAPE WAYTIE," OR "THE SHEEP WALK."

The associations which surround this locality, are equally interesting in connection with the affairs of ancient as of modern times, though for far different reasons. To-day, trodden by the feet of thousands of men representing the interests of the moneyed aristocracy of the metropolis, it was formerly the pastoral scene of the public sheep-walk, called "T'Schappe Waytie," by our Dutch forefathers.

This was a parcel of upland and meadow, which was used for the purpose indicated during nearly the whole period of the Dutch possession. It lay along the south side of the city ramparts, which stretched across the island, (about forty feet from the present north line of Wall street,) extending down the hill to the marsh and ditch, which commenced in Broad street, opposite the present Exchange place, covering the present Wall street and the block between Wall street exchange place, Hanover square and Broad streets.

When it was found convenient to move the common pasture to a greater distance from the city, the land composing the sheep pasture was mostly granted to Dominie Samuel Drissius.

The first considerable improvement of the city, in that vicinity, was the laying out of the Tuyn or Garden street (now Exchange place), along the south boundary of the sheep-walk. The south line of this street was for some years the line of the garden and orchard fence of the old De Sille residence, which fronted on Broad street. A considerable impetus to improvement was given by the purchase, in the year 1691, by the Dutch congregation, of ground for the erection of a new edifice of worship. For this purpose they purchased one hundred and eighty feet front on the north side of the present Exchange place, about the middle of the block, between Broad and William streets, for which they gave one hundred and eighty pieces of eight, probably equivalent to $250 of our currency, or at the rate of about thirty dollars per lot. In 1764, seventy years subsequent to the above-mentioned period, lots on the same street sold for $500 each.

To show the value of lots which formerly embraced parts of the old "Schaape Waytie," the following instances of sales at successive periods are given.

1682.—Lot on Wall street, south side, 23 feet front, 60 feet deep, sold by Mrs. Drissius to John Pond, a laborer, for about $30.

1683.—Lot on Wall street, south side, 23 feet front, 60 feet deep, sold by Mrs. Drissius to Churcher, a bricklayer, for $35. In 1715, same lot, with a house on it, sold by Churcher to Provost for $75.

1706.—House and lot on north-east corner of Broad street and Exchange place, 20 feet on Broad street, 54 feet on Exchange place, for about $650.

1718.—House and lot on Wall street, 22 feet front, 80 feet deep, sold by Swan to Bassett for about $320.

1721.—House and lot in Wall street, 32 feet front, 150 feet deep, sold by Watts to Van Horn for $850.

1729.—House and lot in Wall street, 61 feet front, 108 feet deep, sold by Smith to D'Harriette for about $2,500.

1743.—House and lot on Broad street, near Wall street, 26 feet front, 96 feet deep, sold by Noxon to Wills for about $500.

THE DAMEN FARM.

This plantation was one of the earliest Dutch grants. It was situated on both sides of Broadway. That on the westerly side, extending from near the present Trinity churchyard to Fulton street, and between Broadway and the river. That on the easterly side, lying between the present Maiden lane and a fence about forty feet north of Wall street, and extending nearly to the present line of Pearl street.

Jan Jansen Damen, one of the earliest Dutch settlers, was a trader. He received a grant of this property in the year 1644. He soon after built a substantial stone farm-house, fronting on Broadway, and standing back a little distance from the easterly line of the street. Here he also erected a brewery, and resided on his estate some years. He died about the year 1651, while on his return voyage from a visit to the fatherland, leaving an only daughter, residing in this city, who inherited his property.

Madam Cuvilje (the daughter), at her death, left one son and several daughters who had married in this city. By these heirs portions of the property were soon after offered for sale. In 1661, Augustyn Heermans, a merchant of New Amsterdam, purchased the old farm-house, with about three hundred and eighty front of land lying along the "Heere Waege Wegh," or Great Wagon way, as Broadway was then called, and extending in depth about one hundred and fifty feet. This purchase embraced the lots now situated on the east side of Broadway, embracing the present Pine and Cedar streets, and the fronts in that vicinity. In 1671, Jonas Barteltzen purchased part of the orchard lands extending to Maiden lane, being about 230 feet front on Broadway and 150 feet deep.

On the opposide of Broadway the extent of the farm was, as before mentioned, nearly up to the present line of Fulton street. About five acres of the northermost part of the farm was at an early period purchased by George Ryerson, having 308 feet front on the "Heere Waege Wegh," and running down in parallel lines to the river, having a depth on the north side of 868 feet, 6 inches, and on the south side of 765 feet, 8 inches. After Ryerson's decease, his widow married Teunis Dey. Her heirs divided the property among themselves in the year 1730, but it was not until the year 1743 that it was brought into the market as city lots. Dirk Dey, one of the heirs, became the owner of a large part of this property. The street, still called Dey street, was run through the centre of the property, and was named after him. The following instances of sales of lots on this tract will indicate the value of lands in that vicinity up to the time of the Revolution.

1745.—A lot on the south-west corner of Broadway and Dey street, 30 feet front and 100 feet deep, was sold by Dey to Wynant for £75 (about $187).

1747.—One and a half lot on the south side of Dey street, 37 feet 6 inches front, 85 feet deep, was sold by Dey to Ryckman for £75 (about $187).

1761.—A lot on the north side of Dey street, 25 feet front and 77 feet deep, was sold by Dey to Romeyn for £150 (about $375).

1770—A half lot on the south side of Dey street, 14 feet front and 85 feet deep, was sold by Gomez to Schultz for £160 (about $400).

1770.—A lot on Broadway, near Dey street, 25 feet front and 100 feet deep, was sold by McAdam to Earle for £380 (about $950).

Next, south of Dey's property, on the west side of Broadway, was a piece of land which, in 1669, was sold by the executors of Rachel Van Tienhoven (one of the heirs of Madam Cuvilje), to Oloff Stevensen Van Cortland, a wealthy brewer of the old Dutch era. The extent of this purchase was nearly 250 feet on Broadway, and extending in parallel lines to the river. The south side was bounded by a lane leading to the wind-mill on the shore of the river. This property remained in Van Cortland's family for many years, having, on the division of his estate, been apportioned to two daughters, one of whom married Frederick Philipse, and the other Mr. Teller. In 1733, the heirs of these parties agreed on a partition of the property, and laid out a street forty feet in width, running from Broadway to the river, near the middle of the tract. The property was subsequently acquired by Philip and Frederick Van Cortland, descendants of the old burgomaster before named. The street, until then without a name, was called Courtland street, which it has held until the present time. The first lot sold by them was in 1737. It was situated on the north side of Cortland street, containing 25 feet front, and in depth 126 feet, to the land of Dey, and was sold for £26 (about $65).

The portion of the Damen farm, lying south of Van Cortland's purchase, was sold by the heirs of Cuvilje, in smaller parcels, to various persons. The value of these lands, at different periods, will be indicated by the following record:

1667.—A house and lot described as on the "Heere Street, north of the garden of the West India Company," which may be at present designated as on Broadway, north of Trinity church-yard, 48 feet front and 85 feet deep, was sold by Vandercliff to Dervall for twenty-seven beaver-skins (equal to something less than $100).

1716.—A lot on the west side of Broadway, near the present Liberty street, 23 feet front and 110 feet deep, was sold by Boelen (the pioneer store-keeper in that part of the city suburbs), to Bogert for £50 (about $125).

1726.—A house and lot on the west side of Broadway, about 70 feet front and 50 feet deep, was sold by Bickley to Philipse, for £450 (about $1100).

1743.—A lot on little Queen street, now Cedar street, 25 feet front and 69 feet deep, sold by Spratt to Blank, for £55 (about $140).

1749.—A house and lot, then situated on the corner of Broadway and a lane formerly leading to the windmill of Peter Jansen (now closed, but about midway between Courtland and Liberty streets), 40 feet front, 110 feet deep, sold by Wenham to Ludlow, for £350 (about $875).

1762.—Lots on Crown street (now Liberty street), about 25 feet front and 70 feet deep, sold for £233 each ($580).

Having thus referred to that part of the Damen farm lying along the Heere Waege Wegh, it is proper to remark that, although this thoroughfare was not an inconspicuous feature in the topography of the town, it by no means bore its relative importance to other parts of the city that it bears at present.

* * * * * * * * * *

As to that part of the Damen Farm lying along the city wall.—The heirs of Madam Cuvilje, having partitioned the farm among themselves, they ran off the part lying east of the Heere Waege Wegh, in the rear of the lots fronting on that thoroughfare, into different parcels, marked by lines running at right angles with the city wall.

The present north line of Wall street was originally between forty and fifty feet south of the line of palisades and the ramparts and ditch which constituted the city wall of New Amsterdam. At the time of the partition referred to, the wall had become in a dilapidated condition, having for many years been suffered to go into gradual decay. The palisades had disappeared, but the ditch still sufficiently marked the south boundry of the Damen lands.

It is proper to note a circumstance of some interest in connection with Wall street. The southerly line of that street was, as before related, laid through the sheep-walk, and was established with reference to a proper field of manœuvers for the military defense at the city wall. The distance from that line to the wall was about 100 feet from the ditch and ramparts; but to leave a street of that width was considered unnecessary at that time. A project was, therefore, conceived by Governor Dongan to speculate upon this circumstance. In 1685 he procured one of his officers, Captain Knight, to purchase of the heirs of the Damen farm, eighty feet in depth along the line of the ditch, to the extent of the front of their property. To this eighty feet he added between forty-two and forty-five feet out of the vacant land south of the ditch, and thus made lots of the depth of from 122 to 124 feet, along the front of which he fixed the northerly line of Wall street. These lots became his private property. Dongan sold that portion of the lots lying south-east of the present William street to John West, and afterwards, in 1689, sold that portion of it extending from William street to near Broadway, to Abraham De Peyster and Nicholas Bayard two leading citizens.

The building of the City Hall at the present head of Broad street, in the year 1700, served to establish Wall street as a conspicuous part of the town, and from that period it took, in prospective, a prominent position among the city thoroughfares.

* * * * * * * * * *

We shall conclude this account of the Damen farm by a translation of the descriptive parts of the patent for the land, issued in 1644, by the Director-General and Council to Jan Jansen Damen:

"Land lying on both sides of the public road;" "the piece that lies between the river and said road, extending 75 rods, north-east, and on the northern side till to the beach, 61½ rods: on the south side, till to the beach, 38 rods, in a regular line; by the beach, 68 rods. There is a projecting point on the north side.

"On the eastern side, it extends along the public road 50 rods. On the south side, next to the Company's land, south-east, a little easterly, 72 rods, 9 feet, 5 inches, to the land of Tymen Jansen. Fifty-two rods and two-thirds, next to the land of Jansen, till by the beach, east by south and east, south-east thirty-seven rods, three feet. Along by the aforesaid land to the lot of Maryn, seventeen rods and eight fee, and extends further from the north end on the east side of Maryn's land, next to the road running betwixt the land of the Secretary, Van Tienhoven, and the said land of Jan Damen, throughout till to the starting point at the common highway."

VAN TIENHOVEN'S PLANTATION.

This estate was granted to Cornelius Van Tienhoven, then Secretary of the Dutch government, at about the same period that the Damen grant was made. For many subsequent years the easterly boundary was defined by marks

on the trees, as but a small portion of the estate was cultivated, and the remainder was left open for a cattle range into the woods. Van Tienhoven erected a dwelling on the elevation of the hill overlooking the East river, to which a lane ran up from the river shore, on the present line of John street. The hill upon which the mansion stood was called the "Gouwenberg," or golden hill, which it retained for many subsequent generations, and long after it became thickly settled. The use of that cognomen is still remembered by many old citizens.

The Van Tienhoven land extended along the northerly side of Maiden lane, from Broadway to within a few hundred feet of Pearl street (where it met the land of Vanderwell, who owned the corner of Maiden lane and Pearl street), thence easterly, about 200 feet, thence down to the road along the river (Pearl street), and along that road easterly to a point between Fulton and Beekman streets, whence it proceeded westerly to Broadway, mostly along the present south line of Ann street, thence along Broadway to the starting point.

A brief sketch of Van Tienhoven's personal history may prove interesting. In 1633, he was book-keeper of wages in the office of the West India Company in this city, which place he held until 1638, when he was promoted to the office of Secretary of the Colony. He afterwards held the office of "fiscall" or public prosecutor and "schout" or sheriff of New Amsterdam. He married Rachel, a step-daughter of Jan Jansen Damen. He was a man of great subtilty of mind and strength of will, and may be said to have controlled the policy of government under the early governors, and although not holding the same sway under the more vigorous administration of Stuyvesant, he still maintained with him an influence second to that of no other man in the province. He was the most unpopular man in office, but nevertheless continued his successful career in power, in despite of the strenuous efforts of the citizens to have him unseated. To follow minutely his biography, would cover the whole political history of the country, until the time of his disappearance from the stage of action. It was at length found impossible to disregard the public clamor; and, although sustained by all the force of Stuyvesant's influence, the Directory in Holland dismissed him from office in the year 1656. His spirited nature could not brook the triumph of his enemies, and he either absconded or committed suicide, the former of which seems probable. His hat and coat were found floating in the river, which was the last vestige of him seen in New Amsterdam; his property was administered upon as if he were dead.

The Van Tienhoven plantation came into the hands of John Smedes, who divided it into two parcels, one of which, embracing the old mansion and that part of the land between the river road (Pearl street) and a line drawn a little west of the present Gold street, Smedes sold in the year 1677 to Henry Rycken, for the sum of 2,900 guilders. It is supposed this was sewant currency (Indian money), which was at a great depreciation, and was probably equivalent to about five hundred dollars of present currency. The remaining portion, extending to Broadway, was sold by Smedes to an association of shoemakers. This sort of tradesmen, at that period, were at the same time tanners. The shoemakers of New Amsterdam had originally established themselves along the present line of Broad street (which was a marshy locality, suitable to the construction of tan-pits); but that vicinity having become too much environed by inhabitants to render the tan-pits sufferable, they removed to the locality above mentioned, and made their pits along Maiden lane, which was also a marshy section.

These two divisions of the Van Tienhoven plantation became more extensively known in after years, when it was divided into lots, as the "Van Cliff" estate, and the "Shoemakers' Pasture," of which the subsequent history will be here given.

* * * * * * * * * *

THE VINEYARD

This was a piece of land, extending from about 117 feet east of Fulton street to Beekman street, and lying between Broadway and Nassau street.

Before Governor Dongan granted his charter to the city, in 1686, by which all the "waste, vacant and unpatented lands," on the island, were vested in the Corporation; he appropriated this piece to himself, built a cottage upon it, and laid out the ground in a handsome manner, as a garden, which was subsequently, for many years, called the Governor's Garden. It embraced about two acres of land. After the governor's departure to his native Ireland (where he afterwards became Earl of Limerick), his garden was a pleasure resort, commonly called the Vineyard.

His kinsman, Thomas Dongan, of London subsequently exercised control of this property, which, in 1762, was sold to Thomas White, a wealthy Englishman, then lately become a resident of this city.

In 1773, a lot on the present line of Ann street, where it comes into Broadway, 49 feet front, 81 feet on Ann street (a triangular piece), was sold by White to Hopper for £238 ($595).

THE LEISLER ESTATE

This property, hallowed in the recollection of the liberal party of early times, by the fact of its being the place of execution and burial of Jacob Leisler, the champion of the people's rights, in the troublous times of William and Mary, was situated along the King's road (present Chatham street), extending from Beekman pasture, along that road to the vicinity of Duane street, and in depth, to the Swamp, called Cripple-bush.

The original grant of the land in question was made in 1642 to Govert Loockerman and Vandiegrist, and is described as "a house and land on the East River, as the same is fenced in by David Provoost, which fencing begins at a brook of fresh water, emptying into the East river, till to the land of Cornelis Van Tienhoven, whose palisades extend from the long highway towards the East river, as may be seen by the marks by him made bordering on the aforesaid land, from the fence to the great tree, which is the right division line between Philip De Truy and Van Tienhoven. The said Philip, extending his palisades from said tree north-east by east and east north east between both till to Bestevaar's cripplebush, and from the East river, north-west and north north-west between both, till to the same swamp, and since, from old time till now, betwixt the land which we sell to Loockermans and Vandiegrist, and the farm of said Tienhoven, there has been a wagon road running to the great highway. It is ordered, that until the land hereby conveyed shall be enclosed. Tienhoven may use the road as it is," afterwards to be used as a private road between the parties.

This grant is singularly indefinite as to boundaries and extent, and gave rise to much subsequent dispute. It was claimed to embrace the Swamp, but that claim was abandoned. This property was mapped into building lots by the heirs of Leisler.

* * * * * * * * * *

BALTHAZAR BAYARD'S PURCHASE, SOUTH-EAST OF THE CRIPPLEBUSH.

This property, containing about seven acres, was situated

along the west side of the high road, (present Pearl street,) and bounded on the Swamp. It extended along the road from the present Vandewater street to Ferry street. It was purchased by Bayard in 1671, at public sale, for a trifling sum.

* * * * * * * * * *

BESTEVAAR'S CRIPPLEBUSH, OR THE OLD MAN'S SWAMP.

By which name the vicinity still called the Swamp (neighboring Ferry street) was called in early times, was, after some disputation between claimants, conceded to be in the City Corporation, under their charter grant in 1689, of "all the waste, vacant and unpatented land" on the island.

The Swamp lay in its normal condition until some time after the neighboring lands had been mapped out, and much improved as building lots. But the improvement of Maiden lane drove the tanners from that vicinity, and it was seen that this improving locality might be made available for their purposes.

Jacobus Roosevelt procured from the City Corporation, in 1732, a quit claim grant of the swamp, paying therefor the sum of three hundred pounds, (including one hundred pounds which had been previously paid in 1728 for ten lots.) The swamp contained four and a half acres. In 1734, Roosevelt having sold out three-fourth parts of his purchase to John Chambers, John Roosevelt and Abraham Van Wyck, the property was mapped out into streets and lots, forty-nine in number, which the four owners divided among themselves.

* * * * * * * * * *

CATIEMUTS.

This name, which is apparently of Indian origin, was applied to a hill on the south-east side of the Kalkhook Pond, extending along the present Chatham street, from Chambers street to the brook which traversed near the present line of Pearl street. The property was owned at an early period by William Merritt, Mayor of the city, who conveyed it in 1698 to William Janeway.

THE NEGRO BURIAL-GROUND.

A grant of this land was made, in 1673, by Governor Colve to Cornelius Van Borsum, a baker. It extended along the present east side of Broadway, from Chambers street about three hundred feet, to a point between the present Reade and Duane streets, thence eastward along a road or lane which led to the Kalkhook Pond, about six hundred feet, and being about square, its southern boundary running along the north side of the present Chambers street.

This ground seems, from an early period, to have been the negro burial-place; its use for that purpose being acquiesced by the proprietors, until it became valuable by the enlargement of the city. In 1753, the heirs of Van Borsum, by Jacob Teller, Jacobus Stoutenburg and Mary VanVlack, applied to the Common Council for the exchange of some other lands as an equivalent for the negro burial-ground.

THE CHURCH FARM.

In the early times of the Dutch settlement, the West India Company, which held the original proprietary interest in the lands, reserved to itsself a farm, which was called the Company's farm. That economical government also had its garden, in which vegetables were raised for the support of its officials and soldiers. The farm reserved for its use, was situated along the present west side of Broadway, extending from Fulton street to a point about midway between Chambers and Warren streets, and bounded on the other side by the North river. When the country of New Netherlands was conquered by the English, this private estate passed to the Duke of York, to whom the country had been granted. The accession of this prince to the Crown made this farm a part of the Crown lands. Thus this portion of the "Church farm" was acquired by the King.

In 1705, the then Governor Lord Cornbury, granted the "Queen's farm" to Trinity Church, in fee simple, reserving a quit-rent of three shillings.

The subsequent history of the successive occupants of this estate is briefly as follows:

The farm was leased by the Church to Joris (George) Ryerson, who cultivated it for several years. Francis Ryerson succeeded to the occupancy; then a person named Harrison, subsequently Mr. Balm, to whom succeeded Cornelius Cozine. Afterwards Adam Vandenberg became the tenant. The farm-house stood facing the lower end of the City Commons, at a point in the vicinity of the present Astor House.

In 1750, the Church commenced leasing the southern part of the farm in single city lots. After this period, the number of leases increased with great rapidity to the time of the Revolution, so that, at that period, almost all the farm lying south of Reade street was under lease for various terms, generally for twenty-one years, but sometimes for longer terms, ranging as high as sixty-three years. An indication of the rents reserved on these leases may be given by that to Bell and Brookman (in 1752), for four lots, bounded east by Broadway and north by Murray street, the rental of which was eight pounds per annum.

Among these leases some were for a considsrable extent of land. One to Degrushe, for a ropewalk, extended twelve hundred feet in depth from Broadway (nearly reaching the river) on the northerly line of Warren street. The King's College (late Columbia College), received a fee title to their grounds.

The topographical features of the farm lying above the district just referred to, are described by a witness as follows (his relation is of a period about the commencement of the present century): "There were but few houses in Chambers, Reade, or Barclay (now Duane) streets, or in the lower part of Warren street, where it intersects the Greenwich road (now Greenwich street). North of Warren street was a hill, over which this road passed. After rising the hill, the first building on the west side was Harrison's Brewery, close to the North river, and in or about the block between Jay and Harrison streets. On the east side of the road, nearly opposite the brewery, was Speth's oil-mill, in or near Harrison street. The next improvement was Lispenard's place, of several acres of land lying along the Greenwich road. His mansion-house was east of and at some distance from the road, and near to what is now called Desbrosses street. North of Lispenard's was a tavern, a place of public resort, called Brannan's Garden, which was also on the east side of the Greenwich road, and adjoined what is now called Spring street. North of and adjoining to Spring street, and also on the east side of the road, was Richmond hill, containing several acres of land, on which Colonel Burr resided. North of Richmond hill, on the same side of the road, was an extensive garden and nursery of trees, occupied by one Williamson, called Williamson's nursery, through which now pass the streets called Le Roy, Morton and Barrow streets. Next to his nursery, on the same side of the road, there was a piece of land adjoining Christopher street, on which was a tavern, called the 'Indian King,' and opposite to it and the nursery was a piece of land lying on the west side of the Greenwich road, along which there was a long hedge of white thorn, and which was possessed by General Morton, and extended from Christopher to Le Roy streets." All these pieces of

property were a part of the Church farm, and held under leases from Trinity Church.

To refer more particularly to that part of the Church farm which was originally called the Dominie's Bowery," or sometimes the "Dominie's Hook," and which lay between Reade and Canal streets and the North River, and the swamp, through which West Broadway now runs, some incidents concerning its condition before the Revolution, may be stated:

The first record of its occupancy, is a lease by the Bogardus heirs to a tenant at a rental of about twenty dollars per annum, the tenant to build a barn, and leave it at the expiration of his lease. This part of the Church farm was, prior to the Revolution, mostly under lease to Leonard Lispenard, who cultivated it for farming purposes. Mr. Lispenard's residence was on the block now bounded by Hudson, Canal and Vestry streets, situated upon elevated ground overlooking Lispenard's meadows, which lay to the north and east of his residence. The meadows were the property of Anthony Rutgers, father-in-law of Mr. Lispenard, and a great part thereof afterwards came to the share of Mr. Lispenard and his wife.

During the Revolution a redoubt was constructed near the present North Moore street and the river. It was in extent about sixty yards square, having a ditch and ramparts with a building in the centre. It was removed after the war, on the extension of Greenwich street.

As to that portion of what is called the Church farm, which lay between Canal and Christopher streets, it is difficult, from any evidence now extant, to discover the sources of the Church title, except to about ten acres in the vicinity of the present Clark and Spring streets. The remaining portion was commonly known as old Jan's land, and was so called, it appears, from its proprietor Jan Celes. It is certain, however, that the Church have been in possession of that part of the farm from an early period in the last century. In whatever manner this land was acquired, it must have cost the Church but a small sum, judging from the price paid for the ten acres above mentioned, which was fifty pounds.

But it is sufficient for our purpose to say that Trinity Church claims title to this part of the Church farm, and to the reversion, after the leases, which now cover a considerable part of it have expired, which will be in a few years. The Burr lease, as it is commonly called, was executed to Aaron Burr, May 1, 1797. It was for sixty-nine years, and will expire May 1, 1866. It covered between twenty-six and twenty-seven acres, lying between Spring and Hamersly streets, and from Greenwich street, on the west, to a line four hundred and fifty feet, eastwardly from Hudson street, on the east (excepting one block).

The limits of this article prevent a more detailed statement of the Church farm, its general history being, it is supposed, sufficiently indicated for the interest of the casual reader.

THE KALCKHOOK.

The Kalckhook, signifying by translation from the Dutch, "Shell-point," and indicating, probably, one of those extensive deposits of shells which were found by the early settlers on the sites of old Indian villages, was a neck of high land running by the side of the Kalk pond, and into the marsh which lay on the north and west sides of the point, afterwards callled Lispenard's meadows. Its southern boundary was between the lines of the present Reade and Duane streets. It contained about forty-five acres of land.

The Kalckhook was granted by Governor Kieft, in the year 1646, to Jan Jansen Damen, and in 1661 was conveyed by the heirs of Damen to Augustyn Heermans, who on settling in Maryland, conveyed the property to Governor Stuyvesant, by whom, about the year 1669, it was conveyed in four undivided parts to four gentlemen of the city.

In 1689, the owners of the different shares, viz: the heirs of Thomas Lewis, Abraham Verplank, Jan Vinjé and Jacobus Van Cortland, made a partition of the land among themselves, dividing the property into four parts, containing from eleven to thirteen acres each.

It was at this period, and for nearly forty years subsequently, a waste, nearly all covered by blackberry bushes, and a small growth of forest trees.

In 1712, Vinjé's portion, on the south-east side of the property lying east of Broadway, and between Reade and Leonard streets, and containing about eleven acres, was sold by Rouse, the then owner, to Fountaine, for £82 ($205).

About the year 1726, Anthony Rutgers commenced his purchases of the different parts of the Kalckhook, with a view of improving it and establishing his residence there.

The south-western quarter of the Kalckhook was, in the year 1726, owned by Richard Hill, by whom it was sold to Rutgers for the sum of £120 (or $300). It contained about twelve acres of land, extending approximately from the present Reade street on the south to Leonard street on the north, and lying between Broadway and the meadows, West Broadway.

In the same year Mr. Rutgers purchased from the heirs of Thomas Lewis the quarter of the Kalckhook which had been assigned by the partition to Lewis. This portion lay on the north-western part of the point, extending nearly from the present Leonard street to Canal street, and between Broadway and West Broadway. It contained between twelve and thirteen acres. The sum paid for this tract was £142 ($355).

Mr. Rutgers built his residence on the site of the present Hospital grounds, where he lived for many years. His grounds were handsomely laid out near his residence, in the geometrical style of gardening then in fashion. The fields were brought under cultivation, and the "shell-point," fertilized by the decayed deposits from which its name was derived, assumed the appearance of civilized culture. A walk through the meadows to the shores of the Kalchhook pond, brought the visitor to a place of delightful equatic enjoyment. Pleasant landscape views surrounded the scene in all directions. But one evil tended to throw its baneful shadow over this delightful residence: the terrible fever and ague was supposed to infect the neighborhood of the marshes which surrounded the Kalckhook.

After the death of Mr. Rutgers, his heirs, the Rev. Henry Barclay, who had married a daughter; Leonard Lispenard, who had married another daughter; and his son Anthony Rutgers, Jr., caused a map of this property to be made in 1763, and in 1765 they made partition of different portions of this and other real estate among themselves.

Most of the property on which the Hospital now stands was purchased of Anthony Rutgers, Jr., and was situated on the section apportioned to him. In 1773, two additional lots were purchased by the Hospital Society of the executors of Barclay, who owned the fronts along Broadway, to which the Hospital desired access. With these two lots were also granted the ground at first designed for a continuation of Thomas street, and thus the present entrance to the Hospital grounds from Broadway was acquired. The price paid for this handsome front of ninety feet and one hundred and five feet in depth was £230 ($575).

Very few lots on the Kalckhook were sold previous to the

Revolutionary war. It was some years subsequent to that event, before Broadway was graded through to Canal street.

SAPOKANICAN.

This, which is one of the few Indian names which have been found applied to particular localities on Manhattan Island, appears, from several circumstances besides the name, to have been the designation of an Indian village, situated near the present Gansevoort street on the Hudson river. The name, however, was applied to the surrounding district, and thus farms extending between the "Minitie Water," or "little brook," which emptied into the river, near the present Charlton street and the "Groot Kill," or great creek, which emptied into the river, about a mile above the Minitie Water, was known under the general designation of Sapokanican.

Some of the early grants of farm in this district were the following:

1637.—To Wouter Van Twiller (the Dutch Governor) "100 morgens (200 acres), lying hard by Sapokanican, bounded north by the road from the strand by John Von Rotterdam's land; west by Rotterdam's and Fiscock's plantation, and so far into the woods as to make said 100 morgens." This grant appears to have been principally situated within the present Ninth Ward.

1646.—To Oloff Stevensen Van Cortland, "land north of the plantation of Lasloe, extending up from the strand east by south 100 rods, till to the wagon-road from Sapokanican. East eighty rods along the road all the way through the vallley to Sapokanican at the strand, and thence along the strand to the place of beginning."

1646.—To Cosyn Gerritsen, land next Van Twillers' plantation near Sapokanican.

1647.—To Arien Pietersen Van Alkmaer, land near Sapokanican.

In the times of the Dutch, the name "Bossen Bowery," or Bush-farm, was applied to the northern part of the district of Sapokanican. This name also alternated in the early times of the English with that which was applied by the latter people to that district. The old names of Basen Bowery and Sapokanican, fell into disuse, and the name of Greenwich was given instead.

The following abstracts will give an idea of the value of land in that vicinity in an early period of the English administration:

1695.—Thirty and one-quarter acres, near the Fresh kill, sold by Degroot, of the Bossen Bowery to Heerman's for £125 ($312), or about ten dollars per acre.

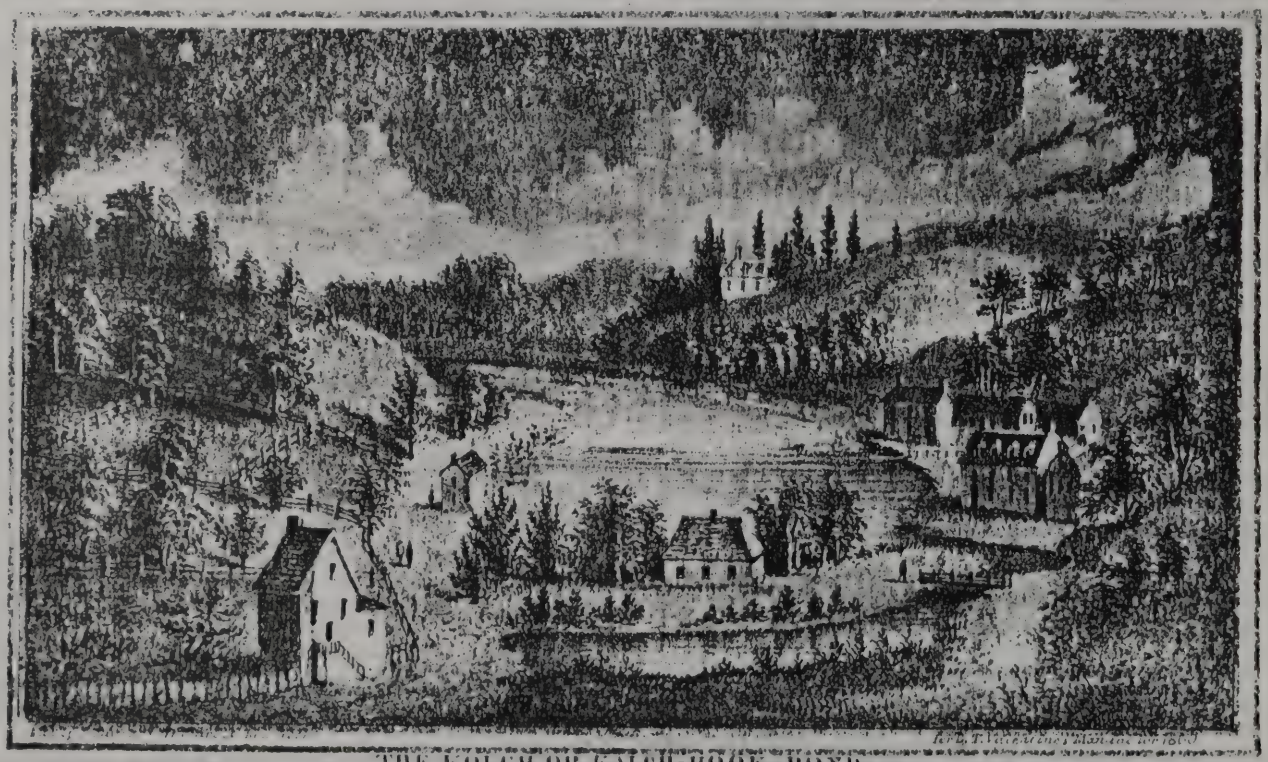
1711.—One hundred and six acres (besides meadows), at Greenwich, sold by Mandeville to Mandeville for £400 ($1000).

1721.—Fifteen acres "in the rear of the Bossen Bowery, alias Greenwich," sold by Bastian to Onclebag for £10 ($25). or one dollar and sixty-six cents per acre.

1721.—Forty-six acres in "Shapecanican," on the west side of the highway that leads to the "Basen Bowery;" also sixteen acres at the Basen Bowery, sold by Van Hosen to Duane and others for £160 ($400), about six dollars and a half per acre.

One of the largest estates in the vicinity of Greenwich, during the last century, was that of Admiral Sir Peter

Plate Twenty



THE KOLCH OR KALCH-HOOK POND,
as it was in Olden Times.

Plate Twenty-one

Warren, lying west of the present Greenwich avenue, which was its easterly boundary, and north of Christopher street. It covered nearly thirty of the blocks at present built upon. This gentleman was, while a captain in the British navy, stationed in the port of New York for many years. He married here a daughter of Stephen Delancy, a wealthy merchant. Sir Peter left three daughters, one of whom married the Earl of Abingdon. Upon the division of the property of Sir Peter, a portion of about fifty acres of the Greenwich farm fell to the Earl's share, who, in the year 1788, disposed of it to Mr. Mallen, a bolter, for the sum of $2,200. It was divided into lots some years after the Revolution.

BAYARD'S FARM.

This property was, in the times of the Dutch, owned in part by Heermans, Steenwyck, Van Cortland and other proprietors along the west side of the Bowery road, by whom it was used for pasturage for their cows, which, as was the custom at that period, were kept for family use.

The first purchase by the Bayard family of land forming part of this estate, was in 1672, when Augustyn Heermans sold to Nicholas Bayard, Secretary of the Mayor's Court, about twelve acres on the west side of the Bowery, near the present Chatham square. Subsequently, other lots were purchased from different owners along the Bowery road, and a large tract west of Broadway, which previously belonged to Peter Santom, until the estate, towards the middle of the last century, covered the principal part of that portion of the city now bounded by the Bowery on the east, Canal street on the south, Macdougal street on the west, and Bleecker street on the north, embracing over sixty blocks, as now built upon.

Nicholas Bayard, the ancestor of the family of that name, was one of the most conspicuous men of his time. He came to this city while a youth, soon after the arrival of Governor Stuyvesant, of whose wife he was a relative. He was for some time clerk of the Mayor's Court, and afterwards engaged in the brewing business, his residence and brewery being on the present Stone street, west of Hanover square. He was during his life an active politician, and particularly conspicuous in the times of the Leisler troubles, as an opponent of the Leislerian party, the chiefs of which party owed their deaths, it was considered, more than any other thing, to the rancorous hatred of Bayard. Mr. Bayard was, for some time, Mayor of the city, and occupied other prominent official posts.

The Bayard Mansion, on the estate now written of, was situated near the present junction of Broadway and Grand street, was erected about the middle of the last century, and became the seat of Nicholas Bayard. "Bayard's Mount," sometimes called Bunker-hill, was a high hill, overlooking all the surrounding country, and situated near the present Grand and Centre streets.

THE MEADOWS, OR NEW BATAVIA.

We have before mentioned "Wolfert's Meadows," through which ran the stream which carried the waters of the Kalkhook pond to the East River. Originally, when the Dutch first settled this island, they divided off the most arable portions of the island within two or three miles of its southern point into farms of convenient size, which were

given to actual settlers; among others, was the farm afterwards known as a part of the Rutgers' farm, near the East river, which at first was occupied by Wolfert Gerritsen, from which the meadows west of the farm being used by him, acquired the name. This land afterwards came into the possession of William Merritt (at one time Mayor of the city), and was purchased from him by William Janeway, a purser in the British navy. It was described as "a piece of land, and the valley or meadow ground beginning from the run or creek, present junction of Chatham and Pearl streets), along the highway north-east to Stilles land 150 rods; along Stilles land to the meadow south and by west 40 rods, along the meadow north north-west 44 rods, (bringing it to the present Pearl street, near Monroe street); then along the hills northward (along the present Pearl street), 48 rods, to place of beginning."

Janeway mortgaged this place (with other lands), upon which was a wind mill and other buildings, to De Kay and others, in this city, for £500, and afterwards established his residence in England, where he executed a second mortgage, without disclosing the first, to Noy Willey. By an existing act of Parliament, he was thus deprived of his exiquity of redemption, and the title vested in Willey, who, in 1731, sold the property above described (except the Jews' burying-ground, and another small parcel) to Christopher Banker, of this city, for £80.

This property, including the swamp, after various transfers, came into the ownership of Anthony Rutgers.

The Rutgers family, who were the most adventurous operators in real estate, were descended from Jan Rutgers, a brewer, in the times of the Dutch, who lived to a goodly age, and in the early part of the last century, his descendants were represented in this city by three brothers—Anthony, Jacobus, and Hermanus—all thriving and far-sighted business men as brewers or merchants, and thoroughly bent on investments in real estate in the suburbs.

After the death of Anthony Rutgers, his heirs and devisees became seized, among other extensive lands, of the property now in question, which extended in front along Pearl street, from near Madison street to near James street, on Chatham square, and thence in a diagonal line to Catharine street, and so to the East river.

* * * * * * * * * *

BOWERY NUMBER FIVE.

This farm was granted, in 1645, by the Director-General and Council, to Cornelis Clasen Swits. It is described as "land called Bowery number five, on the north of the land of Cornelis Jacobsen Stile, or bowery number six; along said land east, a little south two hundred and forty-two rods; north by east, sixty-eight rods, to Pennebacker's bowery; along the same, west by north, two hundred and thirty rods, and south-west to the wagon road, sixty rods."

This property covered nearly all the present Tenth and Thirteenth Wards. It was subsequently embraced in the estate, which, during the last century, was called Delancey's East and West farms, owned by James Delancey, for some years Lieutenant-Governor of the province. Mr. Delancey's residence was situated on a block near the present Grand and Broome streets, and was surrounded by grounds, handsomely embellished. He died at this place, in the year 1760. His property was inherited by several children, who, during the Revolutionary war, espoused the Royalty party, in consequence of which the estate was confiscated, after the war, and the property sold off in city lots, by officers of government, appointed for that purpose.

* * * * * * * * * *

THE "COLLECT," OR "FRESH WATER."

The beautiful lake, at various periods of our history, known by the appellation above named, has been at different times mentioned in the previous editions of the Manual, and some accounts of its early history have been casually given. The object of the present article is to show the manner and the time when it was obliterated from the topography of the city by the inevitable process of "filling in and improving;" certainly, the least interesting memento of its existence, except in the practical light, which enables us to appreciate the changes from ancient to modern times.

The Collect is still within the memory of some venerable citizens of New York, but to most of them its existence is only a historical fact. It is presented in old maps, on which its outlines are laid down, but its peculiar topographical features—the noble hills rising abruptly from its sides, the groves upon its borders the blackberry wilds, which covered the surrounding hills, in many parts, the depth and purity of its waters—these are not brought to mind by maps, and

Plate Twenty-two

THE KALCKHOOK AT THE CLOSE OF THE REVOLUTIONARY WAR, 1782.

their illustration must be by description or pictorial views.

It will not be regarded as a "twice told tale," if we review its earlier condition, and before recounting its destruction, we show its antecedent history, from the primitive time when it rested in placid beauty, surrounded by the wilderness alone, or the rude fields of Indian culture, to the time when the march of civilization progressed towards its borders, and they became the seat of mechanical industry, and finally to the time when its depths received the earth of the surrounding eminences, an dits former site was embraced within the populated parts of the city.

There is little doubt that on the western borders of this lake was situated an Indian village, probably a favorite home of the fierce "Manhatans," described by Hudson, in his itinerary of the discovery of the river called after his name. They appear to have been a namadic tribe, depending less upon the cultivation of the soil than upon the more precarious methods of subsistence by hunting and fishing. In all the early history of the Christian settlers, no indication is made of the locality of Indian settlements on this island, except from inference. Deposits of shells, which invariably indicate a native settlement, were abundantly strewn over the hills, on the western side of the lake, and gave to that promontory, in early times, the Dutch name of the "Kalchhook," or, as translated, "Lime-Shell Point."

The waters of this little lake were of great depth, and

of unusual purity. One of its principal fountains, afterwards well known as "the tea-water spring," supplied a population of ten or twelve thousand inhabitants with water for their favorite beverage. Other, but smaller brooks, trended from different valleys between the surrounding hills, and preserved its pellucid depths. A sparkling brook carried off its waters into the East river, while, towards the North river, stretched a marsh, covering several score of acres, through which streamlets from this pond percolated.

For more than a hundred years after the Christian settlement of the island, fish were abundant in the "Fresh-Water Pond," and were even caught by nets during all that period. By an ordinance of the Common Council, in 1734, it was ordered "that if any person or persons whatsoever do from henceforth presume to put, place or cast into the pond, commonly called Fresh-Water Pond, belonging to this Corporation, any hoop-net, draw-net, purse-net, casting-net, cod-net, bley-net, or any other net or nets whatsoever, and shall take and catch any of the fish within the said pond therewith, or by any other engine, machine, arts, ways or means whatsoever, other than by angling with angle rod, hook and line only, every person so offending against the tenor of this law shall, for every offence, forfeit and pay the sum of twenty shillings current money."

The ownership of this pond was for some time a matter of dispute. It was claimed by the city, as a part of the "unpatented" lands, granted to them by the Dongan Charter, in 1686. About the year 1694, however, Governor Fletcher granted the pond, together with the adjacent meadows, embracing in all about seventy acres, to one John Evans. This grant was, however, annulled in 1698, by act of assembly.

In 1730, Anthony Rutgers, who owned the greater part of the Kalkhook, on the western borders of the pond, petitioned the King in Council for a grant of the swamp and pond, which was granted in 1733.

The conflicting claims between the Corporation and Rutgers' representatives were settled in the year 1791 by the latter executing a release of the pond for the consideration of one hundred and fifty pounds, paid by the Corporation.

After the Revolutionary War, the question as to what should be the permanent regulation of the pond, occasioned considerable discussion. The progress of the city had already formed a considerable settlement around the borders of the pond, and considerable encroachments were made upon its boundaries. The Corporation, therefore, caused a survey of its ancient lines to be made, which was completed in 1790. For the purpose of quieting any question as to the title to the ground under water, it was thought advisable before adopting any policy in relation to its permanent regulation, to purchase the interest of the Rutgers' heirs. This was effected in the year 1791, the sum before mentioned being paid for a release of their interest. The title thus becoming indisputably in the Corporation, they had the boundaries of the pond staked off to prevent encroachments, and surveys were ordered, with a view to laying out streets, when the pond should be filled in.

Several plans were presented for the permanent regulation of the locality; among others was one, presented in 1766, by Monsieur Mangin, a French engineer, who was then one of the leading men in his profession in the city. His proposition was to make a dock or basin, in the deep water of the Collect, as a harbor for shipping, and to communicate with both the North and East rivers by means of a canal of some forty feet in width.

It was concluded, however, in the following year, not to construct a basin, but to fill in the Collect, the question of a canal being still left open. About the year 1800, the work. was to pay five cents per load for earth, delivered tinued about ten years. The general plan adopted in this work, was to pay five cents per load for earth, delivered and dumped into the pond.

The long time occupied in this labor, occasioned a serious inconvenience to the neighborhood, and the pond, in place of its original beautiful appearance became a nuisance and an eye-sore; dead animals, and every species of rubbish and offal were thrown into it, and occasioned an insufferable stench. In connection with this subject, it was thought advisable not only to fill up the pond with the cleanest and best earth which could be obtained, but to dig out the bottom, or sediment soil of the pond, which was found to extend to a great depth, and to be composed of decomposed vegetable matter, similar to peat or turf. A great quantity of this soil having been dug out, the question of making it remunerative, by converting it into fuel, was suggested, and during the summer of 1808, many laborers were employed upon this labor, but from some reason it was discontinued after a month or two.

To recur to the project of a canal, which, as before intimated, was proposed to be constructed from the North to the East rivers, passing through the Collect pond. This subject was elaborately discussed during several years. In 1805, a committee, to whom the subject had been referred, reported that they had maturely considered the subject of extending a canal or tunnel from the North to the East rivers, through the fresh-water pond and the meadows adjacent, for the purpose of carrying off the water from the streets that descend thereto, and that they considered that "the only practicable method that can be adopted to produce the desired effect, without injuring the health of the city." The distance between the two rivers is one hundred and four chains and forty links or 6,830 feet, and the greatest elevation of ground above low water is twelve feet nine inches. The difference of the time of high water in the two rivers, will give a head of water of about sixteen inches every tide, to carry off such filth as might have entered the tunnel." The committee estimated the cost of construction at an average of eight dollars per foot, or about fifty-four thousand dollars in all. They recommended an ordinance, "for the construction of a tunnel to extend on a level from the East to the North river, one foot above low-water mark, and the internal diameter of which should be six feet in the clear."

It remains to say, on the subject of the canal or tunnel, that after some further consideration, it was decided not to communicate in that manner between the rivers. Various projects of open ditches, etc., were next proposed, and for a temporary period were adopted. For some time an open ditch ran through the street then filled up, and called Collect street (now Centre street). The springs around the pond rendered some regulation of this kind necessary. Even as late as 1811, the subject was considered, "how far it would be proper to fill up the Collect, and whether it would not be expedient to leave some of the springs or fountains of it open." But in 1816, we find an ordinance for the regulating and paving of Collect street; some years before that, the lots had been to some extent improved. The state were ceded the old arsenal grounds, and an humble class of buildings (some of which still remain) were erected on the site of the Collect pond.

THE MEADOWS ADJOINING THE COLLECT POND.

It has been mentioned that Anthony Rutgers, in 1733,

procured a patent for the meadows or "swamp," and the fresh-water pond. In his petition to the King in Council for this grant, he sets forth the natural condition of this locality as follows:

"PETITION OF CAPTAIN ANTHONY RUTGERS TO THE KING

[New York Papers, Bundle Dd., 138.]

To the King's Most Excellent Majesty in Councill.

The humble petition of Anthony Rutgers of the City of New York in America, Merchant.

Sheweth:

That by letters patent, dated the 9th day of August, in the sixth year of the reign of King William and Queen Mary, passed under the seal of the Province of New York, and registered in the Secretary's Office, there a certain swamp and fresh pond called the fresh water, and adjacent to the Duke's farm, upon the Island Manhattan, now called New York Island, beginning (as in the said patent is set forth) at a stake set in the ground on the south side of the said pond, and at the northeast corner of the land belonging to Wm. Merritt, thence running along the south side of the said swamp and pond, by the upland, to the beach on the east side of Hudson's River, so along the beach to the upland, thence crossing a small gut of the said swamp to the land on the east side thereof, thence by the said land, as it runs to the east side of the Tan Yards, and thence to the place where begun containing in all seventy acres, as by a survey then taken thereof appeared, was granted unto Capt. John Evans, his heirs and assigns forever under the yearly rent of one peppercorn.

That there having been about the same time several exorbitant and extravagant grants of land lying in the said province made by the said then Governor thereof, their excellencies the then Lord Justices, by their instructions, bearing the tenth day of November, 1698, directed the then Governor of the said Province to use all legal means for the breaking of extravagant grants of land in the said province.

That according to this instruction, the Assembly of New York, passed an act entitled "An act for the vacating, breaking and annulling several extravagant grants of land, made by Col. Benj. Fletcher, the late governor of this province, under his Majesty, which act recited, several exorbitant grants containing mostly large tracts of land from twenty to thirty miles, and the said Capt. Evans, having a grant of a large tract of land, besides the grant of the said swamp above mentioned, the said grant of the said swamp (Tho' but seventy acres) was (as it is presumed on account of his said other grant) recited in the said act as an extravagant, and all the grants of land recited in the said act (and amongst the rest that of the said swamp) were by the said act declared to be extravagant grants in themselves, and within the meaning of the said instruction, and as such were thereby broke, vacated and forever annulled, and it was enacted that all grants for the said several parcels of land should forever thereafter cease and determine and become null and void * * * and of none effect to all intents and purposes whatsoever, as if no such grant and registers of the same in the secretary's office had ever been made, and the said grantees their heirs and assigns were forever thereafter divested of any right, title, or claim unto the same; and his then Majesty was by the said act fully and immediately seized and re-possessed of all and every the before granted premises in as full and ample manner as if the same had never been before granted, and it was enacted that the registry which had been made of the said grants in the Secretary's office, should be immediately obliterated and razed, and the memory or record thereof be reduced into oblivion as if no such grants had ever been made or registered.

"And to the intent that it may not be in the power of his then Majesty's Governors for the time thereafter to make for the future such extravagant grants of lands, it was further enacted that it should not be in the power of any of his then Majesties Governors which should thereafter be Governors of that Province under his then Majesty, his heirs and successors for to grant or demise for any longer than his own time in the Government the King's Farm, the King's Garden, the Swamp and Fresh Water, being the demesne of his Majesties forts in New York, and for the benefit and accommodation of his Majesties Governors and Commanders in Chief for the time being and all grants thereof made by any Governor longer than for the time before mentioned are declared to be ipso facto void."

That your petitioner begs leave most humbly to inform your Majesty that the said Swamp is filled constantly with standing water, for which there is no natural vent, and being covered with bushes and small trees, is by the stagnation and rottenness of it, said water becomes exceedingly dangerous and of fatal consequence to all the inhabitants of the north part of this City bordering near the same, they being subject to very many diseases and distempers, which by all physicians and by long experience are imputed to those unwholesome vapors occasioned thereby and as the said swamp is upon a level with the waters of Hudson's and the South Rivers, no person has ever yet attempted to clear the same, nor ever can under a grant thereof, which is to expire with the next governor; for the expense in clearing the same will be so great and the length of time in doing the same such that it will never be attempted but by a grantee of the fee simple thereof and as the same can be of no benefit until it is cleared, so no person hath hitherto accepted a grant of the said land on the terms in the said act mentioned, but the same hath ever since lain and still remains unimproved and uncultivated to the great prejudice and annoyance of the adjacent farms, particularly to a farm of your petitioner's adjoining thereto, which your petitioner after having been at a great charge and expense in settling cannot prevail on any tenant to take the same or get any servants to continue there for any time while the said swamp remains in its present state.

Wherefore, and as it will not be worth any persons while to drain and clear the said swamp unless he have a grant of the fee simple thereof, and as it is undoubtedly in your Majesty's power to grant the fee simple thereof, and as no governor of the province or any other person hath for these thirty three years past attempted a work of this kind, which cannot be completed in the time that governours usually reside in this province, and as it cannot be expected that anyone will be at the great expense and spend so much time as the cleaning and draining the swamp will take up, without he can be sure he shall have a permanent interest therein, and as unless this swamp be drained and cleared it must forever remain a pest and a public nuisance for the time to come, as it hath done for thirty three years past, and as the City is now extended very near the borders of this swamp, and as the same continuing

in the condition it now is may very prejudicially affect the laboring men, who live in that part of the town nearest this swamp, where land is purchased at an easy rate, on account of this swamp, and who actually lose one-third of their time in sickness, and your petitioner, being willing and desirous to be at the expense of draining and clearing the same on having a grant of the inheritance thereof, your petitioner therefore most humbly prays your Majesty that you will be graciously pleased by your Royal leave and license to empower John Montgomerie, Esquire, your Majesty's present governor of this Province to grant the fee simple and inheritance of the said swamp or tract of land to your petitioner, his heirs and assigns under the reservation of such moderate quit rents as shall be thought proper.

And your Petitioner shall ever pray, etc."

"December 1730."

* * * * * * * * * *

The letters patent granted to Mr. Rutgers, required him to drain the swamp within a year from the date thereof, which he proceeded immediately to comply with, and constructed a ditch leading from the fresh-water pond through the meadows, to the North river. His proceedings gave umbrage to the tanners, whose vats were sunk on the southeasterly shore of the pond, and who complained that the waters were lowered by the drain to such an extent as to interfere with their supply; in consequence of which, the drain near the pond was ordered to be filled up. The meadows, however, assumed a different appearance from the system of drainage adopted by Mr, Rutgers, and the bushes being cleared off, a handsome meadow of fifty or more acres, afforded luxuriant pasturage.

As we have mentioned, in connection with the Collect Pond, the question of its improvement, and that of the meadows, became a subject of animated discussion soon after the Revolutionary war. By an act of the Legislature, commissioners were appointed, to whom was intrusted the subject of the permanent regulation of that part of the city. And it was proposed to drain the meadows by an open canal, which was proposed to be forty feet in width, with lines of streets on each side, of thirty feet in width. During several years, this subject was discussed among those interested in city affairs.

It was at first decided to open a canal from Broadway to the Hudson river. One of the plans for carrying this project into effect, with a perspective of its appearance when completed, is illustrated by the drawing given in connection with this article. The subject and various plans were discussed during several years; as late as March, 1805, a committee of the Common Council reported a resolution in favor of an open canal, to pass through the centre of the proposed street, through the meadows, and recommended that the street be of one hundred feet in width; the width and depth of the canal they left to future consideration.

Canal street (or Duggan street, as it was at one period called, after Mr. Thomas Duggan, a large property owner in its vicinity) was temporarily laid out in 1806, but for a number of years subsequently the general regulation of the meadows was very imperfect. In 1808, property owners presented a petition, representing that upwards of three thousand lots fronting on Canal street and the vicinity, could not be improved or used, owing to the existing state of the street. That the cellars around the Collect, and some of those in Chapel street (now West Broadway), were overflown with water; that the various plans for regulating Canal street had proved very prejudicial to the proprietors, and that one plan, however imperfect, would prove less injurious than the frequent fluctuations that had before taken place. They, therefore, petitioned that application be made to the Legislature for Commissioners to lay out, regulate and open Canal street; and that the plans adopted for that purpose might be declared permanent. In accordance with this petition, application was made to the Legislature, and an act was passed appointing several distinguished Engineers from other part of the State as Commissioners. Of these, however, Governeur Morris, Simeon De Witt, and Mr. Rutherford, declined acting. The Commissioners who finally accepted were William H. Ireland, Daniel J. Ebbets and Samuel Russell, who entered upon their delicate duty in the summer of 1809.

The necessity of embracing within their action the drainage of the land north of Canal street, which, though laid out upon maps into streets, had not yet received any action as to their permanent grades; it is needless to go into details respecting the scientific difficulties attending this important work; suffice it to say, that after some years the labor was satisfactorily completed, and the tangled swamp became covered with habitations, and its peculiar geographical features, when in a state of nature, are hardly perceptible at the present day.

* * * * * * * * * *

After the Revolution, the County Clerk officiated as Clerk of the Common Council until the year 1807, during a great part of which period Robert Benson, a member of one of the old New York families, officiated as Clerk. Thomas Morris, a well-known citizen, was also Clerk during the latter portion of this period.

In 1807, upon the petition of the Common Council, an act of the Legislature was passed, giving to the Common Council the privilege of appointing their own clerk; and in the June of that year, they first acted upon that authority.

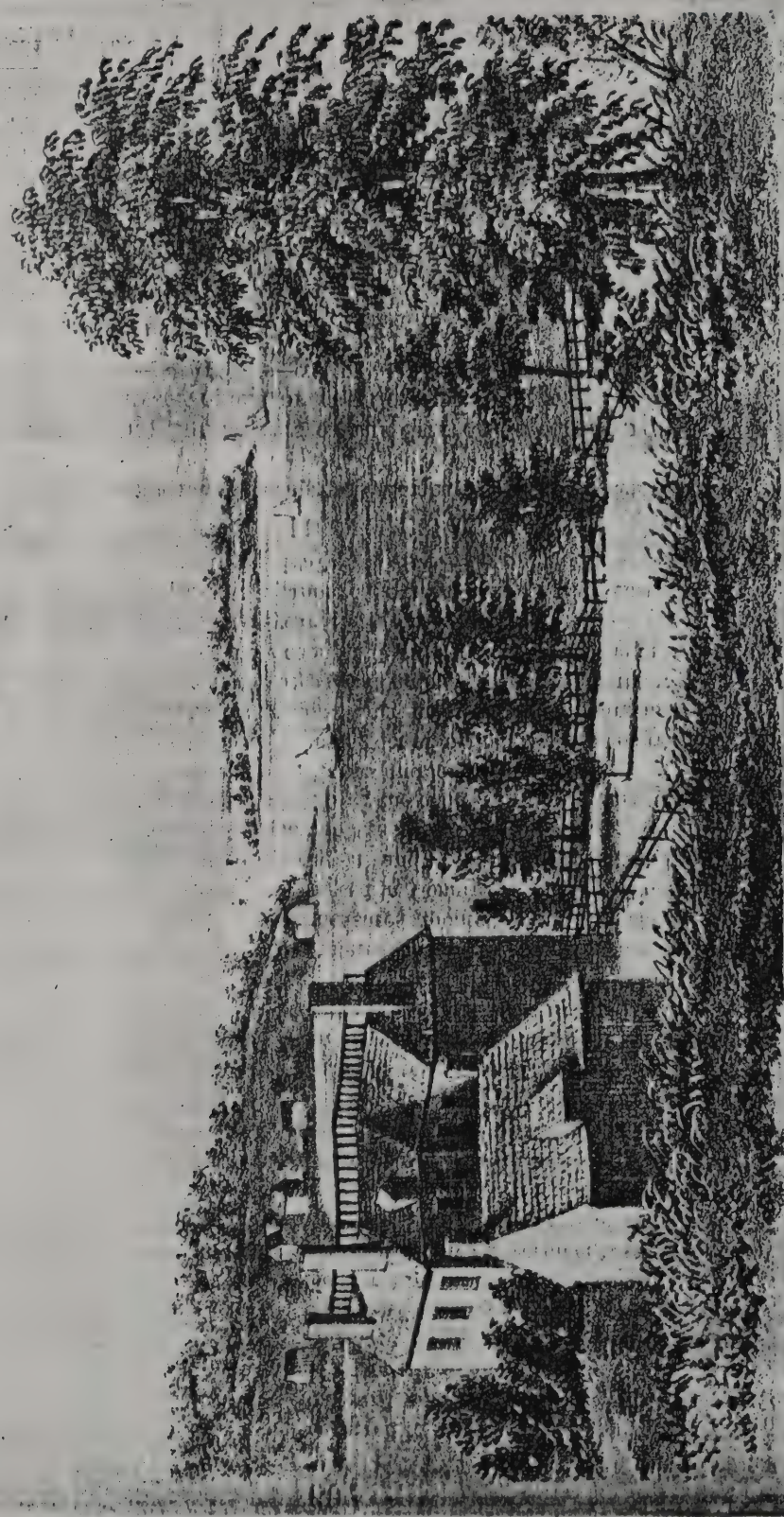
John Pintard, the first clerk of the Common Council, (whose official title was City Inspector and Clerk of the Common Council,) was appointed in May, 1807; and in June of that year reported that he had received from Mr. Morris, the County Clerk, all the minutes of the Council, from the year 1675 to that time, comprehending seventeen volumes folio.

* * * * * * * * * *

THE PARK AND ITS NEIGHBORHOOD IN FORMER TIMES.

The "Vlachte," or "Flat," "Second Plains," "Commons," "Fields," by which name the present Park has been known at different periods, was originally the common grazing place of the cattle belonging to the citizens of New Amsterdam. Following the plan of European villages, this place was left open to the public use, and is probably the first recognized public property on this land. Its jurisdiction and proprietorship thus tacitly fell to the people, and it has in its subsequent history, been the scene of some of the most important political demonstrations ever witnessed. While the island was yet in the possession of the Indians, it has been surmised that their village was situated on this spot. There is no account, we believe, in our historical records, of the precise locality at which the tribe known as the Manhattans resided, but judging from what has been received as undoubted evidence of the establishment of an Indian village, namely, the mixture of shells with the upland soil, this spot has been either the site of, or in the immediate vicinity of a large Indian village at some period more or less remote. When it came under the dominion of the Dutch, and its war paths were brought down to the more domestic purposes of cattle walks, it came under the general superintendence of a herdsman whose business was,

Plate Twenty-three



THE OLD RUTGERS MANSION, N.Y. 1768.

for a certain stipend from each family, to perambulate the village of New Amsterdam and blow upon his horn a note of invitation at the garden gates of the inhabitants, whose cows being let out joined the common drove and were driven through the romantic valley road now called Maiden lane, and having arrived at the common pasture were restrained from more distant perambulations by the watchful herdsman.

And in that manner, and to those uses was the "Vlachte" appropriated for many years. Afterward it became subject to less innocent and peaceful uses. It saw the warlike parade of the Dutch soldiery on training days. It witnessed the formation of a battle array under Captain Colve, destined to the capture of the city. It became the place of popular meetings for all sorts of purposes, among which were the holiday festivals of the English period, such as their Majesty's birthday, the anniversary of the discovery of the gunpowder plot, &c. It witnessed bonfires and illuminations, militia trainings, executions, burnings in effigy, and tumultuous meetings of Liberty Boys before the Revolution.

As an epitome of public acts relating to the Commons, the King's Farm and to the Fresh Water Pond, until the space now occupied by the Park was inclosed by picket fence, and the present City Hall erected, we present the following abstracts of resolutions and ordinances from the Common Council records:

No Holes to be dug in the Commons.

1731.—It is enacted, that "if any person or persons whatsoever within this city or liberties thereof shall, at any time hereafter, dig any holes in the Commons of this city on the south side of the Fresh Water, or take or carry away any earth or mould, or shall cut, take, or carry away any sods or turf off and part of said Commons, he shall suffer a fine of forty shillings."

Law against taking Fish in Fresh Water Pond, in any other way except by Angling.

1734.—Be it ordained, that "if any person or persons whatsoever do, from henceforth, presume to put, place or cast into the pond, commonly called Fresh Water Pond, belonging to this Corporation, any hoop-net, draw-net, purse-net, casting-net, cod-net, bley-net, or any other net or nets whatsoever, and shall take and catch any of the fish within the said pond therewith, or by any other engine, machine, arts, ways or means whatsoever, other than by angling with angle-rod, hook and line only, every person so offending against the tenor of this law, shall, for every offence forfeit and pay the sum of twenty shillings current money."

Owners of Brick-kilns on the Commons in 1742.

1742.—Joseph Paulding, Cornelius Cozine, Charles Dobbs and Abraham Paulding, Jacobus Ryckman, William Wood.

Respecting the Tanners on the borders of Fresh Water Pond.

1745.—Ordered, That the tanners who have, and shall hereafter dig pits at the Fresh Water for the benefit of water, may in future enjoy the benefit thereof, and no one shall deprive them thereof.

The building of the Powder-house on the Island in the Fresh Water Pond.

1747.—The Recorder acquainted the Board that it is the opinion of the Governor and Council and the Committee of the Assembly, that the hollow near the poor-house is the most proper place for building the magazine, and this Board considering the same, agree to the magazine being built there, provided the Corporation have the appointment of the keeper, and the benefit of the storage of all the powder there belonging to private persons.

The Commons hired out for Brick-kilns.

1751.—Ordered, A committee to inquire "what rents are due from the brick-makers for brick kilns made on the Commons of this city, and demand the same; and that they also have power to treat with and agree for the leasing of such parts of the said Commons for the making of brick kilns, as to them shall seem meet."

The Negro Burial-ground and Pot-house.

1753.—Petition of John Teller, Jacobus Stoutenburg and Mary Van Vlack, in behalf of themselves and others, praying that a grant of some lands belonging to this Corporation, in exchange for the negro burying ground; as also for a small slip of land on which a pot-house, &c., are built. Consideration deferred.

Removal of the Common Gallows from the lower end of the present Park to the present vicinity of the Five Points.

1756.—A committee appointed to remove the gallows from where it now stands to the place where the negroes were burnt some five years ago, at the foot of the hill called Catiemuts' Hill, near the Fresh Water.

Poor-house Burial-ground on site of present City Hall.

1757.—A small piece of the ground "of the length of two boards," to the eastward of the work-house fence, ordered to be inclosed for a buriel place for the poor of said work-house.

The building of the New Gaol, (present Hall of Records)

1757.—Committee appointed to superintend and purchase materials for the new gaol, and to proceed with all speed in completing the same.

The erection of Barracks in the time of the Old French War, along the present Chambers street.

1757.—The committee appointed to confer with carpenters respecting the building of barracks, report the following resolution, viz: That the said building be forthwith carried on under the direction and inspection of the above mentioned committee, who are hereby empowered to treat with such persons, and provide such materials for the carrying on and completing said work as they shall judge proper; and further ordered, that the said building contain twenty rooms on a floor, two stories high, to be twenty-one feet square, four hundred and twenty feet long, and twenty-one feet wide, to be built on some of the common lands of the Corporation to the southward of Fresh Water, between the new gaol-house and the house of Catiemuts.

Place of the Brick Yards along present Chatham street, then the High Road to Boston.

1759.—A Committee appointed to "lay out in lots some ground belonging to this Corporation, which lie between the new gaol-house, and the house commonly called 'Catiemuts;'" (present south-west corner of Pearl and Chatham streets.)

3d April, 1759. This being the day appointed for farming, by public outcry, several lots belonging to this Corporation, which lie between the gaol-house and the house of Thomas Brown, near the palisades, four of the same were let, three to Joseph Paulding, and one to William Copeland.*

*For brick yards.

The Land in Vicinity of the Negro Burial-ground

1760.—Henry Van Vleck, merchant, attending the Board in behalf of his sisters Sarah and Eve Van Vleck, and proposed the leasing of three lots of ground contiguous and adjoining to the Negroes' Burying-place,† on part of which said lots their father built a pot-house, pot-oven, and sunk a well, supposing at that time the said lands were his property, whereupon this Board, having taken the same into their consideration, resolved to lease the same to said Sarah and Eve Van Vleck, and for nineteen years and six months, at forty shillings rent for each lot of twenty-five by one hundred feet.

Extension of Broadway through the Commons

1760.—Mr. Marschalk, one of the City Surveyors, produced to this Board the draft or plan of a road which he hath lately laid out by direction of this Corporation, viz; Beginning from the Spring Garden house,‡ where the street now is of the breadth of eighty-two feet six inches, and extendiyg from thence north thirty-seven degrees, east thirty minutes, until it comes to the ground of the late widow Rutgers, leaving the street thereof fifty feet in breadth, which is approved of by this Board, and ordered that the same be recorded in such manner accordingly.

The King's Farm.

1761.—Trinity Church released their claim to several streets in their land commonly called the "King's Farm," lying north of the present St. Paul's Church.

Place for Pitch, etc., on Commons.

1762.—A certain place appropriated near to the house of Elias De Grusha, near the Negroes' Burial-place, for the reception of pitch, tar, turpentine, and shingles, and ordered that no such articles be kept in any other place south of Fresh Water.

Whipping Post, Stocks, Cage and Pillory.

1764.—Ordered that the Committee of the new gaol have power to cause to be erected opposite the said new gaol, a public whipping post, stocks, cage and pillory, in such manner as they shall think proper.

Janeway's Farm on present Chatham street.

1765.—Petition of George Janeway, carpenter, setting forth that he is entitled to a lot of ground lying on the south-west side of the Fresh water, and the east-south-east side of the Kalk-hook, which adjoins the land of this Corporation, and gives notice that he is desirous of a survey.

* * * * * * * * * *

Regulation of Murray street.

1768.—Petition of several inhabitants, living in and near Murray street, that the same might be regulated; whereupon it is ordered that the same be regulated by the Committee for regulating the several public streets in the West Ward.

Value of Land on the "Kalch-hook," present Broadway, near Pearl street.

1769.—William P. Smith produced deed to the Corporation of ten-twelfths of a lot 248 feet square, situated to the northward of the "Common-field" of this city, near the Fresh Water, bounded on the west by Broadway, and on the east, north and south sides by Corporation lands, for which lot this Board has agreed to pay Mr. Smith £1,713, and such payment is thereupon ordered.

* * * * * * * * * *

†The Negroes' Burial-ground, was situated near Stewart's marble store on Broadway.

‡Present site of Astor House.

Regulation of the Streets on the "King's Farm."

1773.—The major part of the Committee appointed to regulate the streets in the vicinity of the College, made their report in substance as follows: We, the subscribers, having had Murrays street leveled, from the head of it down to a corner house, now occupied by Mathew, a baker, making a descent of two inches for every foot. We have also had Robinson street leveled, from the head of it, at Merselis' house, to the College gate. We have also had Warren street leveled from the head of it at Cox's Tavern corner, down to Samuel Francis' house.

* * * * * * * * * *

It is proposed to lay out streets near the Kalch-hook, or in the vicinity of the present Reade and Duane streets.

1784.—Petition of Henry Kipp and others, that a Committee be appointed for laying out streets near the Kalch-hook, was read, and a Committee appointed accordingly.

* * * * * * * * * *

A Claimant presents himself for a part of the ground within the present Park.

1785.—A petition of Isaac Sears, relative to his right to part of the ground whereon the Bridewell is erected, and was read and referred to a Committee. This petition set forth that by certain Indentures, duly made by Thomas Arden and wife, dated the 2d and 3d days of February, 1770, he became and still stood seized in fee simple of the share of said Arden, in that piece of ground bounded westerly, in front, by Broadway, southerly by the Green commonly called the "Fields," easterly by the ground belonging to the Corporation and occupied with the poor-house, and northerly by other ground of the said Corporation. Of which piece of land John Harris the elder was seized at the time of his death; that the said petitioner actually paid for the said piece of ground the sum of Eighty Pounds. That the Bridewell was afterward erected on part of the said ground; and offered to release his claim upon payment of said consideration money, with lawful interest; which proposition was accepted by the Corporation.

* * * * * * * * * *

Encroachments on the Fresh Water Pond, or Collect.

1787.—It being represented to the Board that encroachments were daily made on the Fresh Water Pond, and that filth and dirt were thrown into it by persons residing there. Ordered that a Committee examine into the matter and report to the Board.

* * * * * * * * * *

The Collect Pond surveyed, and a Diagram of the Streets to be laid out in that vicinity prepared.

1790.—Ordered, A Committee to cause a survey to be made of the ancient bounds of the Fresh Water Pond, and report the same to the Board.

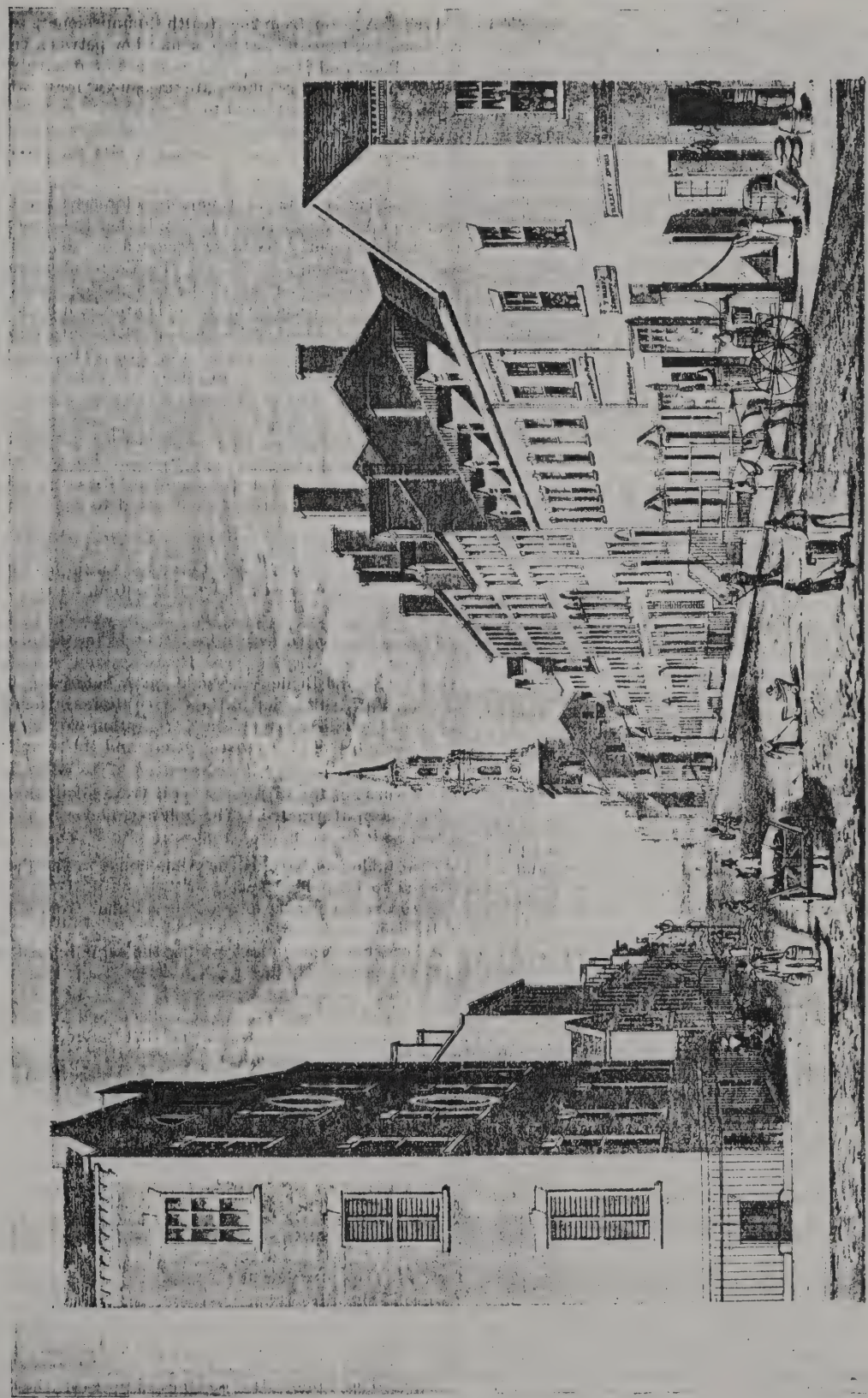
1790.—The Committee appointed delivered in a survey for the several streets in the vicinity of Fresh Water, which was ordered to be filed.

* * * * * * * * * *

The Side-walks of Broadway first Paved, from Vesey to Murray street.

1790.—The Street Committee reported in favor of laying a foot-walk, paved with brick or flat stone, on west side of Great George street, (Broadway,) from Vesey street to Murray street, and on the opposite side; the same to be laid along the Bridewell fence.

Plate Twenty-four



A Claim of Title to the Fresh Water Pond purchased by the Corporation.

1791.—The Committee on the subject of the Fresh Water Pond made a verbal report, whereupon it was resolved to be expedient to purchase the right of the representatives of Anthony Rutgers, deceased, to the said pond for the sum of £150, at which price it might be obtained; and the same Committee were authorized to treat for the purchase of the slip of meadow on the north-west side of the pond, which the Board also thought it expedient to purchase. The purchase of the soil under water was soon after consummated.

* * * * * * * * * *

The Collect or Fresh Water Pond staked.

1792.—Ordered, That Mr. Carmer be added to the committee appointed to treat with the executors of Mrs. Barclay, deceased, as to the purchasing of the meadow lying between the Corporation lot and the Fresh Water Pond; and that the said committee purchase so much of the said meadow as they shall deem expedient; and that they direct the Fresh Water Pond to be staked off so as to prevent encroachments thereon.

Another Survey in vicinity of the Pond.

1793.—Ordered, That a survey be made of the land and meadows at and about the Fresh Water Pond, with the streets which may be necessary marked thereon.

* * * * * * * * * *

Proposition to dig out Broadway, north of the present Duane street.

1795.—A petition for digging out the Broadway, north of Barclay street, agreeable to its regulation, was referred.

A Canal on the line of the present Canal street proposed.

1796.—Ordered, That the Committee on the subject of a canal from the Fresh Water Pond to the Hudson river, be instructed to confer with the proprietors of the Swamp for the obtaining such parts thereof as may be required to make the said canal of the breadth of forty feet, and a street on each side of the breadth of thirty feet.

* * * * * * * * * *

The Grade of Broadway, from the present Duane street to Canal street, established.

1797.—The regulation of Broadway and the intersecting streets, from Barclay street (now Duane street,) to the arched bridge, (across the drain now known as Canal street.) By this regulation, Broadway required digging down at Magazine street, (now Pearl street,) to the depth of four feet nine inches from the natural elevation of the soil. At the intersection of the present Leonard street, it required digging down to the depth of fifteen feet six inches; thence by the regulation it was to descend by a gradual descent to the arched bridge; but the hill through which it was cut increased in height above Leonard street, so that at a distance of five hundred and twenty-five feet above Leonard street, the cutting had increased in depth to twenty-two feet ten inches. This was the highest point, and thence the natural hill descended somewhat steeply to the meadow; the line of Broadway, through the meadow, required raising seven inches. The arched bridge was ten feet seven inches above the surface of the meadow. The digging was commenced within a year or two subsequent to the above date.

Standing water in the Meadows.

1798.—A letter from the Health Commissioners was read, representing that the swamp or meadow between the Fresh Water Pond and Hudson river is overflowed with standing water, and requires immediate measures for draining it. Ordered that it be attended to.

The Manhattan Company selecting a Site for their Reservoir.

1799.—The Manhattan Company addressed the Corporation the following queries: 1st. Whether they were willing to sell the property formerly occupied by Mr. Collis for a well and reservoir; or 2d. If the Corporation preferred leasing it forever; or 3d. If the corporation would permit the Company to occupy the grounds aforesaid until it could be ascertained whether the waters were pure and wholesome and adequate to supply the city. The city, on the first two points, reserved an answer, but granted the permission asked for in the third proposition.

1799.—A letter from the Manhattan Company stated that they would require a part of the inclosed ground in front of the Bridewell (the present Park in front of the City Hall,) to raise a reservoir for supplying the city with water. A Committee was thereupon appointed to confer with the company.

Part of the Negroes' Burial-ground, south of Chambers street, (in the present Park,) Question, as to ceding to the City.

1796.—The Board determined that if the proprietors of the land called the Negroes' Burial-ground, north of the Alms-house and Bridewell, would, on or before the first day of May, 1797, surrender to the Corporation all their ground south of Chambers street, the Corporation would release to them certain lots in Augustus street and the vicinity.

The Records of the City for several years about this period, have been abstracted. The index is, however, preserved, from which we find as follows:

The stable and barn at the Alms-house in the Park were ordered to be pulled down.

A report was made on opening a canal from Broadway to Hudson river.

An order was made for opening the same immediately.

The erection of the present City Hall was resolved upon, and the building commenced.

It was resolved to fill in the Collect, and the work continued during several years, the dirt having been taken from the neighboring hills.

The Manhattan Company applied to purchase the Collect Pond.

Lispenard's Meadows were regulated.

(Transcripts from Records resumed.

* * * * * * * * * *

The Progress of the Canal.

1804.—Application of Otis Toft and Silas Lindsey, to be informed of the regulation of Duggan or Canal street. Referred to Committee on the Tunnel.

1805.—The Street Commissioner is directed to report a list of the owners of land in the direction of the canal or tunnel intended by the survey of Charles Loss, in February, 1803.

1805.—The Committee on the subject of the Tunnel, presented their report in favor of an open canal, to pass

through a street one hundred feet wide; whereupon it was resolved, that a street of one hundred feet in breadth, be accordingly laid out, and that the Street Commissioner be authorized to receive cessions for that purpose from the proprietors who are willing to cede, and that a canal of feet in breadth and feet in depth be constructed of brick or stone, under the direction of the Street Commissioner.

* * * * * * * * * *

The Collect.

1805.—The Committee appointed to examine the state of the Collect reported that it was filled with the bodies of dead animals, and was dangerous to the public health. Whereupon, it was ordered that such animals be removed, and further, that the tunnels or sewers be made to pass through the dam, to carry off the water; and that the head of the Collect be filled in with good and wholesome earth.

1805.—The Street Commissioner reported that he had the offer of several thousand loads of dirt, at five cents per load, and is authorized to purchase it for filling in the Collect.

LEISLERS' GRAVE

This spot indicates the scene of one of the most doleful events in the history of New York. It is only within recent years that the particulars of the affair in which Mr. Leisler was engaged, have attracted public attention; but the interest taken in our historic annals has served as an incentive to the antiquary to bring before the public many documents which have illustrated that portion of our annals, and the subject is no longer a novelty. A brief narrative, however, it is supposed will not be out of place, in connection with the exhibition of his place of execution as shown on the map.

Jacob Leisler was a native of Holland, and emigrated to this country in the time of the Dutch possession; his first employment was as an officer in the troops of the government, but he married soon after his arrival in New Amsterdam, and then engaged in commercial pursuits. He became allied by his marriage, to some of the principal families in this province, and acquired a large estate, being ranked among the wealthiest citizens. His commercial operations were principally in foreign trade, and he is found to have been one of the leading shipping merchants in this city at that period.

The religious controversies of that time were violent, and pervaded all classes. They were more particularly animated after the surrender of the city to the English, for although the Dutch had stipulated for their own mode of worship, yet little reliance could be placed on the guaranty that it should be allowed; for the government of England was itself on the point of civil war, arising out of the rivalries of the various sects of Catholics, Episcopalians and Dissenters, which were contending for the place of power, and the countenance of the government. The reflex of opinions from the European shores found their way here, and occasioned, if possible, more individual excitement among the various sects than was shown at the fountain-head of the Government. Thus matters stood during twenty or thirty years, embracing the time from the death of Cromwell, and the overthrow of Presbyterianism in England, through the succeeding reign of Charles and James, witnessing the restoration of Episcopalianism under the former, and as it was supposed with the latter monarch, the precursing signs of the rebuilding of the Roman Catholic authority in Great Britain. The Dissenters, as this state of things was in progress, began to murmur openly, and to speak of forcible means of preventing the advance of their ancient enemy. The rebellious feeling prevailed throughout Great Britain, and in all her colonies. Here the people watched for the blow to be struck at home, (as the parent country was called), and when, what is called the rebellion of 1688, took place, and King James was deposed, the news here occasioned a general outburst of sympathy, and the people laid violent hands upon the strongholds of the government in this province. The people acted in the first instance by a committee of safety, but owing to the long delays of receiving orders form the government over the water, they finally appointed Mr. Leisler, who was one of their leaders, as the temporary executive of the government.

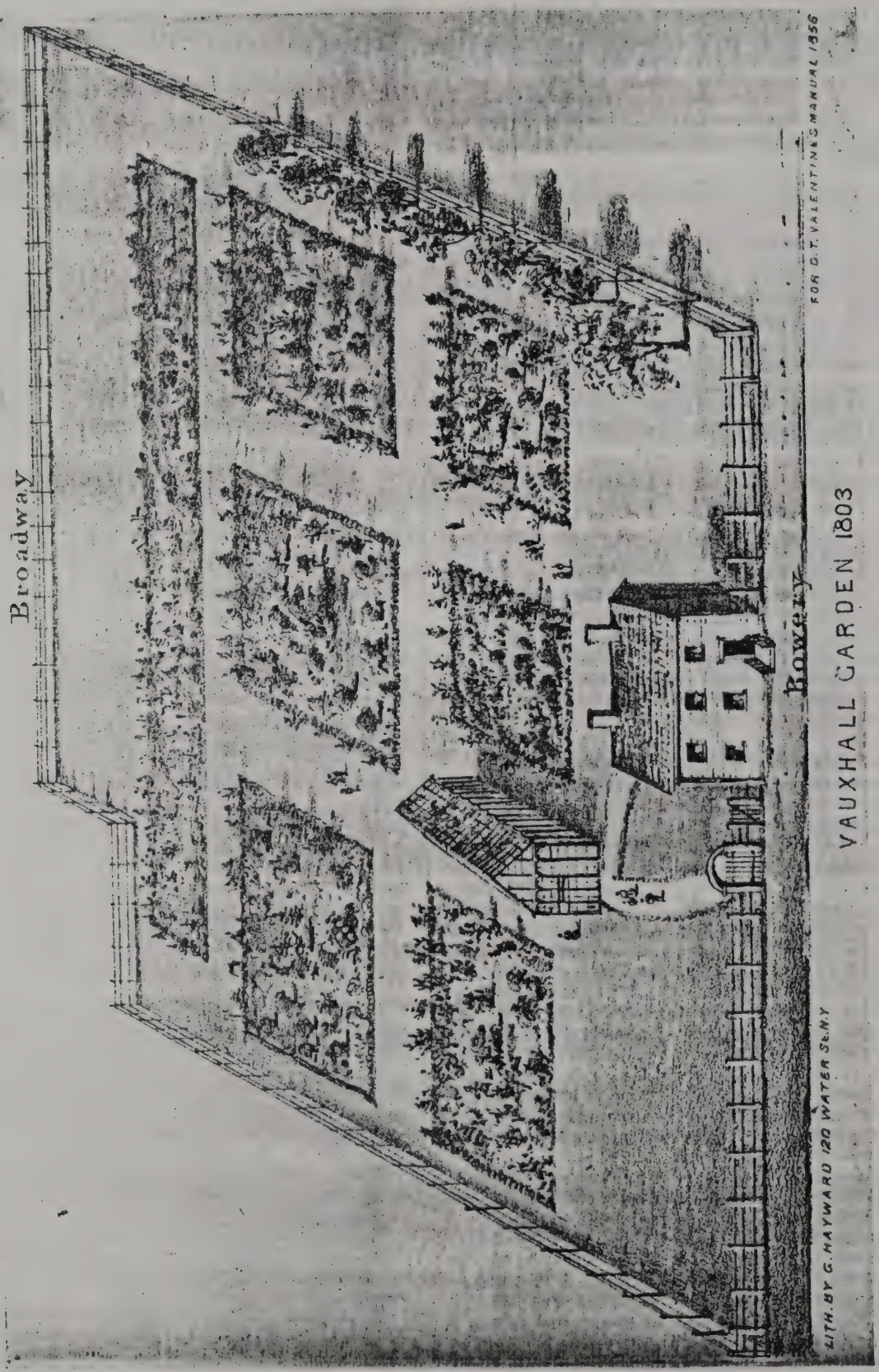
The leading defect in Leisler's character appears to have been an impulsiveness and headstrong force of will which led him beyond the limits of prudence in carrying out the measures of his party. At the present day his position does not seem to have been a difficult one. The leading principles contended for by those with whom he acted, were such as commanded almost universal support; but the turning-point upon which his administration centred, was brought down to a personal contest for the places of government between two factions who professed to work for the same end. It was altogether (as it would seem) trivial in comparison with the extraordinary results produced in this country; brothers, parent and child, indeed all social ties were forgotten in the strife between neighbors for the foot-hold of power. The contest waged between one and two years; some of Leisler's opponents were banished, others imprisoned, and in short he exercised his power with severity, and without regard to consequences. His defence is to be found in the popular excitement, of which he was the exponent; in the pent up feelings of a whole community, during a score of years, now brought into active display. He finally was deposed by the government in England. His enemies being reinstated in the government turned upon him with a blood-thirsty desire for vengeance. He was tried upon insufficient charges, and his condemnation being a foregone conclusion, his conviction followed, and he was sentenced, with his son-in-law, to be hanged. The great majority of the people regarded him as a martyr; fire-eyed fury fairly burnt within the households of the people of New York; but the law, that great principle of government, backed, as it was by power, restrained any positive demonstration toward the relief of the popular leader.

It is said that he was allowed to choose the place of his execution, and that he selected his own grounds for the site of the scaffold, (he owned a seat near Tammany Hall,) designated his garden as his burial place; the spot is pointed out upon the map. The day of the execution was drizzling and disagreeable; the ceremony was equally sad and miserable; the people felt that their own lives were struck at through this sacrifice. The tears of thousands silently flowed as the ceremony progressed, and forty or fifty years failed to eradicate the tremendous tide of popular feeling which flowed on that day.

On the scaffold Leisler made a speech, in which he frankly admitted that he might have been guilty of excesses and, in his religious penitence, he prayed forgiveness of those who pursued him to this extremity.

Some years afterward his remains were taken up, and removed with great solemnity, by a popular assemblage, to the common burial-place of his religious sect, the Dutch Reformed Church in Garden street, (now Exchange place.)

Plate Twenty-five



1734.—"Forasmuch as a great number of farmers and others, inhabitants of this Corporation, have represented that they are greatly prejudiced by a drain laid into the Fresh Water Pond, by Anthony Rutgers, Esq., which has greatly drawn away the water from the same pond, and the said Anthony Rutgers, (one of the members of this court,) producing to this court, Letters Patent, for the swamp, by the said fresh-water, and that he was obliged thereby to drain the said swamp within a year from the date thereof, and that he did not conceive the making of the said drain would have been any detriment to any person whatsoever, and that if it be thought so to be, he is ready and willing to abide the order of this court relating thereto. It is therefore ordered that the said Mr. Rutgers do, by the first day of October next, fill up the said drain, thirty feet from the said Fresh Water Pond, so as effectually to prevent the same from draining the said pond."

* * * * * * * * * *

The Cherry Orchard.—This orchard, which gave the name to the present Cherry street, was originally planted by Govert Loockermans, one of the earliest Duteh settlers. It was situated on the present Chatham square, on the slope of a hill, leading down toward a swamp, which is now covered by Roosevelt, James and other streets. It was, no doubt, one of the earliest plantations of cherry trees on this island.

* * * * * * * * * *

Vauxhall Garden.—In early times called the Bowling Green Garden, was for many years one of the chief places of resort for pleasure-hunters from the city. Its situation was on the shore of the North river, about the present junction of Warren and Greenwich streets. The name was changed to Vauxhall about the year 1750; from which time New York had its Ranelagh and Vauxhall, as well as its great prototype, London. The gardens were highly ornamented, and were laid out in alleys, with shady walks, stretching along the northerly side of the present Warren street, from the river shore to the present Church street. Soon after the Revolution its rural aspect become lost in the maze of streets, although we believe the old house stood for many subsequent years on the corner of Warren and Greenwich streets, still occupied as a place of public resort, but not of the first fashion as of old.

* * * * * * * * * *

The "Drovers' Inn," a tavern of distinction, on the outskirts of the town, situated near the present site of the Astor House. It was, at one period, known as the Spring Garden, a place of public resort. It is believed to have been, originally, the farm-house attached to what was called the King's Farm, stretching along, north of Fulton street, as far as Chambers street, and from Broadway to the river. This farm was one of those originally laid out by the Dutch, on the first settlement of the island, and was reserved to the special use of the Company. Upon the conquest, by the English, it became government property, and was afterward leased to Trinity Church, in perpetuity.

* * * * * * * * * *

LISPENARD'S MEADOWS.

The view on the opposite page represents a rural picture

Plate Twenty-five-A

LITH BY G. HAYWARD 120 WATER ST N.Y. — FOR G. T. VALENTINE'S MANUAL 1856

LISPENARDS MEADOWS
taken from the site of the present St. Nicholas Hotel Broadway
DRAWN BY A. ANDERSON 1785

of that part of our city, in the vicinity of the present foot of Canal street, at a period, we presume, about the time of the Revolutionary War. It is known to those at all conversant with the original geography of Manhattan Island, that a large pond, commonly called the Collect, occupied a considerable portion of the present neighborhood of the Halls of Justice, in Centre street. From this pond, extended toward the North river, a marsh, covering a surface of seventy acres, originally covered by stunted bushes, and filled with swamp rubbish and the rotten growth of ages. It was justly considered the pest and plague of the outskirts of the city; cattle straying into it were sometimes "swamped" in its muddy holes, so that it was necessary to fence it around to prevent idle cattle wandering within its borders. But by far the most serious complaint against the nuisance was its alleged unwholesome effect upon residents in the vicinity, who were great sufferers from the fever and ague, so that farmers could not keep laborers employed upon their lands. These circumstances induced the government, in the years 1732, to grant the fee of the "swamp" to Mr. Anthony Rutgers, a farmer, residing near the present site of the Hospital, upon condition that he should clear and drain it, and pay a moderate quit-rent. We see the western end of the swamp, near the North river, a number of years subsequent to that last spoken of. The bushes are cleared off and a large drain has been cut through the centre of the swamp, drawing its waters into the North river.

The building on the left, (southerly side,) near the edge of the swamp is Lispenard's brewery; upon the hill, among the trees, is the residence of Mr. Lispenard, not discoverable through the foliage. The family of that name were of French extraction, but have been in the country from an early period. The first of the name was an Albany brewer, named Anthony Lispenard, who removed to this city about the year 1684. He died in the year 1696, leaving three children, Anthony, Margaret and Abigail. His wife, Abigail, also survive him. The son, Anthony, died in 1755, at an advanced age, leaving five children, Leonard, David, Magdalena, Abigail and Mary. Leonard Lispenard became the proprietor of the farm and brewery a part of which is represented in the engraving. He was a prominent man in public affairs in this city for many years.

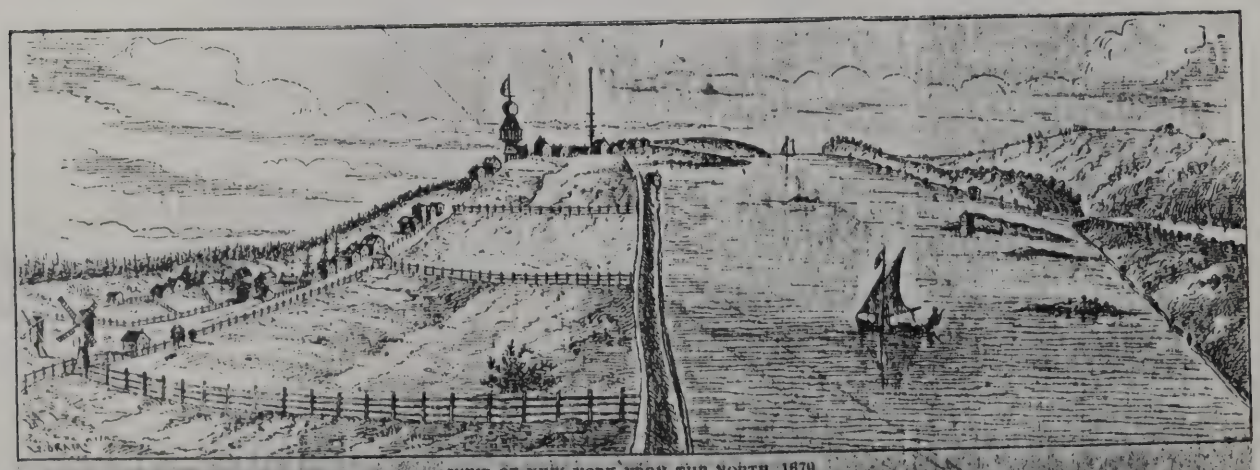
On the right, or northerly side of the swamp, the roof of a dwelling is seen, which was known as the Brannon property. A public garden and place of resort was here established, known as Brannon Gardens. When streets were afterward laid out through the property, one of them was known as Brannon street.

With these pages, you have a pre-revolutionary picture of "Little Old New York."

There is one point which must have been brought forcibly home to my readers, in the perusal of these pages, at least those pages in which there have been frequent references to the King's Farm, viz: that David T. Valentine, the clerk of the Common Council, was pretty sure of his ground. He had the boundaries of this farm postively fixed in his mind, as beginning at Fulton and running northwardly to between Warren and Chambers Street. Aye, and he even has the colossal nerve (and it must have taken some nerve even in his day and age) to contradict Trinity and the Vice-Chancellor, for he very plainly tells us that he does not know how Trinity acquired the property north of Dominie's Bowery.

This is strange! In view of the 4 Sandford case, fixing the boundaries of the King's Farm at Christopher Street, I wonder how David and the Common Council avoided a charge of contempt of court for publishing this dissenting record. David! What a world of meaning even in a name. Let us see, what was it David did? Oh yes, he slew Goliath with a sling shot, and really do you not think David has slung a good shot for the Bogardus family in this article?

As we proceed with the discussion, many references will be made to these recorded historical facts. The Lispenard Meadows. The Fresh Water. Kalckhook. Rutgers Farm. The Swamp. The meadows or commons. Ryerse the supposed tenant of the King's Farm. Vandenbergh. Aaron Burr, and his Richmond Hill Farm, Palisades or Stockadoes. The Ropewalk. Vauxhall Gardens. Old Bowling Green, and I have not yet exhausted Companys—Dukes-Kings-Queens-Church Farm.



VIEW OF NEW YORK FROM THE NORTH, 1670.
Original in possession of W. M. Randell, Office of Board of Fire Underwriters.

Plate Twenty-six

Statutes of Limitations.

These statutes of limitations, more commonly spoken of, as adverse possession, when referring to real property, have been before the courts continuously, since the birth of our Republic.

Whether applied to matter of debt, tort, contract, instrument under seal, judgments, fraud, or real property, the actual wording of these statutes has been, generally speaking, in the selfsame words?

In the application of these various statutes, however, a wide range of opinion has existed among the courts, in order, as it is claimed, to give effect to the statutes. As the personnel of our courts has changed, so has the construction of these statutes, in many instances.

It must be evident that, under our constitution, the legislature could not declare that a wrongful possessor or holder of another's property, becomes the owner, no matter how long such possession or holding continues, for this would be confiscatory and repugnant to our constitution.

Whether many of the decisions invade the realm of the legislative branch of our government, and, under the excuse of giving effect to the statutes, which, on their face, merely close the door of justice, will be considered in a subsequent volume.*

What does adverse possession mean? Has it been defined by the courts?

GILMORE VS. HAM, 142 NEW YORK, PAGE 1:

He who pleads the statute is always taking advantage of his own wrong in the sense that it is invariably his own default, his neglect or wrongful act, which originates a cause of action against himself, and so sets the Statute of Limitations running.

Under much the same circumstances as the 4 Sandford case, we find, in the case of Humbert against Trinity, reproduced in full in the appendix as number seven, the question discussed fully, the court then declaring the effect of Trinity's possession under the statutes. Always bear in mind, however, that the question of Trinity being in possession under the Queen Anne grant was very accommodatingly set forth by the plaintiffs.

In that case the bill itself states that Trinity Church, at the time of obtaining the Queen Anne grant, was fully aware that the Duke's-King's Farm, mentioned in that grant, did not embrace any part of the Dominie's Bowery. Attention is then called to the lack of any northern boundary in the grant. The plaintiffs also contend that at the time of the Cornbury grant, parts of Dominie's Bowery were in the actual possession and seizin of some of the Bogardus family, and that this continued down to and including 1785.

That in divers ways Trinity Church persecuted, and threatened the Bogardus family and tenants, until Cornelius, poor and broken in spirit, tired of the persecution he had suffered at the hands of the church, gave up, and was induced to move off the farm, when all the other branches of the family left, and those holding under them, and Trinity went wholly into the possession of the Bogardus farm.

Trinity Church demurrred to this complaint, thereby admitting all the facts contained in the bill. They did claim that the portion of the lands alleged to be in the possession of the Bogardus, were not set forth in this bill. It would seem that if the Dukes-Kings-Queens-Ryerse description is sufficient for Trinity to claim from Fulton to Christopher Street, Dominie's Bowery should have been sufficient description for the Bogardus in this bill. Trinity Church further claimed in its demurrer that the Bogardus did not set forth the "Share" of lands to which they were entitled; that the bill does not present a case entitling the complainants (Bogardus) to discovery or relief.

It will be remembered that the description of Dominie's Bowery in both the Stuyvesant and the Nicolls grant, is impossible of misunderstanding; the north, south, east and west boundaries are all well-defined, in contradistinction to the Queen Anne grant.

In this Humbert case, Trinity Church claimed to have been in exclusive possession of the property from the year 1785. In the 4 Sandford case, which was decided just seven years later, the time of possession, exclusive and otherwise, was from the time of the receipt of the grant, in 1705.

The court in its opinion in the Humbert case, called attention to the fact that the Bogardus had failed to show possession of their farm since the year 1785, and that by their bill they had admitted that the church was in possession since that time; that the only thing they did was to differ as to the character of the possession.

The court further said, that by demurring the Church had admitted all the material facts stated in the bill, and all the legitimate conclusions of law, deducible from those facts. Therefore, at that stage of the cause, the court must receive the Bogardus as their own historians, and that their history must be treated as absolutely authentic, absolutely true, and incapable of qualification by looking into any matters of fact, however well known or verified by proceedings in other causes.

In this case it is stated that the defendants obtained the grant to the Duke's Farm on their own petition, and that Trinity artfully presented to the government in that petition, a description which left the northern boundary ambiguous; that this northern boundary was the dividing line between the Duke's Farm and the land of the Bogardus, and should have been accurately marked and described, so as to render the separation entirely obvious to the adjoining proprietors; but the learned judge did not say what the Bogardus were to do if they were unable to keep the separation intact after it had been placed there.

When Anneke received her grant as well as the confirmation grant from Nicolls, there certainly was a dividing line between the Company's Farm and the Bogardus. Are we to believe the Bogardus destroyed the boundary line, or are we to believe as the court tells us, that by demurring the Church has admitted all the material facts stated in the bill, one of which is that the fences and enclosures put up by the Bogardus were burned and removed?

However, the court intimates that this want of a separation, and the lack of any definite limit on the north, opened the door for Trinity pretending that their grant of Duke's Farm comprehended the Bogardus lands; that it was for the fraudulent purpose of following out such pretension, by actual encroachments, that they sought to procure the equivocal grant; that this is proved by the pleadings.

It is further said that the Church proceeded to act on its original policy by making considerable encroachments prior to the American Revolution, and that their course was to take such possession, from time to time, which they believed would ripen into a title. In this way, they made a variety of lodgments, though resisted by the Bogardus heirs. That so persistent were these efforts, many of these Bogardus descendants were forced to abandon their possessions by the habitual use of threats and menace, and the frequent exercise of actual violence, such as pulling down fences and

improvements, and occasionally resorting to pecuniary offers.

Thus dawned the year 1785, when the Bogardus family, tired and poor, broken in spirit, worn out no doubt with suffering long and severely protecting their rights, gave up the ship, and the last to leave was Cornelius, who had been holding the property for himself and his co-heirs.

This aged and worn document, here reproduced, plates 28, 29, 30, 31, 32, 33, will give my readers some idea of the conditions existing at that date with the Bogardus family, more graphically than I could describe it.

Bogardus, no doubt, found this last plea unanswered, and realizing the power of this church was too great for him to cope with, gave way and let the church into unrestrained possession of the whole tract. It is said that they secured a deed from Cornelius, on the payment to him of some seven hundred pounds, but the allegation immediately follows in this case, that they have been cautious in exhibiting it; that they have refused to record it; that it was exhibited to the legislature upon their inquiry and investigation as to the title to these lands, which was sometime in and about the year 1785, and again in 1807, but that since that time the deed has been concealed.

There is no doubt, dear reader, with this picture before you, and with the knowledge of the great power and influence of this church, the helplessness of the Bogardus family to retain their birthright is plainly portrayed. There can surely be no doubt in your mind, that it was the settled design of this church from its first move, to obtain possession not alone of the Bogardus tract, but as far as they could travel north without meeting obstruction. This case certainly abounds with proof of their design, and the success attending that design, through the instrumentality of threats, riotous invasion, vandal ferocity, and then pecuniary offers. This case also affords convincing proof of Trinity's knowledge of the Bogardus title, and of their determination to get this whole property by all means within their power, legitimate or otherwise, under color of right. The court itself said "In this way it cannot be denied that the bill makes out a case of strong moral transgression," and, bear in mind, Trinity Church admitted all the facts in that bill by demurring to it. However, the court adds "It is of the nature of the statute of limitations when applied to civil actions, in effect, to mature a wrong into a right, by cutting off the remedy, and that to warrant its application in an ejectment action, the books require a color of title, by deed or other documental semblance of right in the defendant, only when the defense is founded on a constructive adverse possession.

In defining the law of adverse possession, the court said "It is the fixed limit to the remedy; the tempus constitution. One day beyond is as much too late as one hundred years. This is the peremptory inflexible rule at law, fixed by positive statutes, if there has been adverse possession, and no disability of fraud, the door of justice is closed. The claimant cannot be heard to show his title. It is a decisive answer to him that he comes too late. That alone is the bar. His title remains, but he has lost his remedy."

I cannot leave this case without calling attention to a statement by Senator Livingston, who was undoubtedly the son of Robert R. Livingston, a vestryman from 1764 to 1775, and warden from 1785 to 1795.

"I cannot feel myself justified in saying or believing that the patent from Queen Ann was obtained by fraud. I shall never be ready, or prepared to believe in fraud, merely because it may be presumed. I have a better opinion of mankind, and shall require very substantial proofs, whenever I am compelled to believe it.

An opinion was also rendered in this case by Senator Furman, who was presumably the Gabriel Furman referred to as a vestryman from 1821 to 1826.

This Humbert v. Trinity case squarely holds that the remedy alone is effected by the statute.

As the question of adverse possession is the paramount issue in these Bogardus cases, and as the law and the decisions as of the time in question is controlling, I will here give some important cases upon this question, in which able judges participated.

From the following case of Jackson vs. Woodruff, from which excerpts have been taken, we may note certain defined principles announced, for instance:

That a deed relied upon to support a claim of adverse possession, must describe the premises.

If no lands are included, consequently the deed is a nullity, and nothing is granted thereby, and adverse possession for the statutory period, only holds for the parcel actually occupied.

When the party claims to hold adversely a lot of land, by proving actual occupancy of a part, only, his claim must be under a deed or paper title.

That a party taking a deed, a conveyance, for seventy-three acres, in which no land was described or included, for which reason the deed is a nullity, cannot successfully support an adverse possession of the seventy-three acres, by merely occupying and improving two acres, the doctrine laid down being, that a deed or paper title under which the claim is made, must in the description include the premises. If the title is bad it is of no moment; if no lands are described, nothing can pass. The deed is a nullity, and never could lay the foundation of a good adverse possession beyond the actual improvements.

Query: Was the absence in the Queen Anne grant of any northern boundary or description, fatal, and did it render the deed nugatory so far as supporting any claim of adverse possession?

An enclosure by a possession fence, cut around the premises, was held not to be evidence of an adverse possession sufficient to toll the entry of the true owner, after twenty years. The Court says, this mode of taking possession is too loose and equivocal. There must be a real and substantial enclosure, an actual occupancy, a possessio pedis, which is definite, positive and notorious, to constitute an adverse possession, when that is the only defense, and is to countervail a legal title.

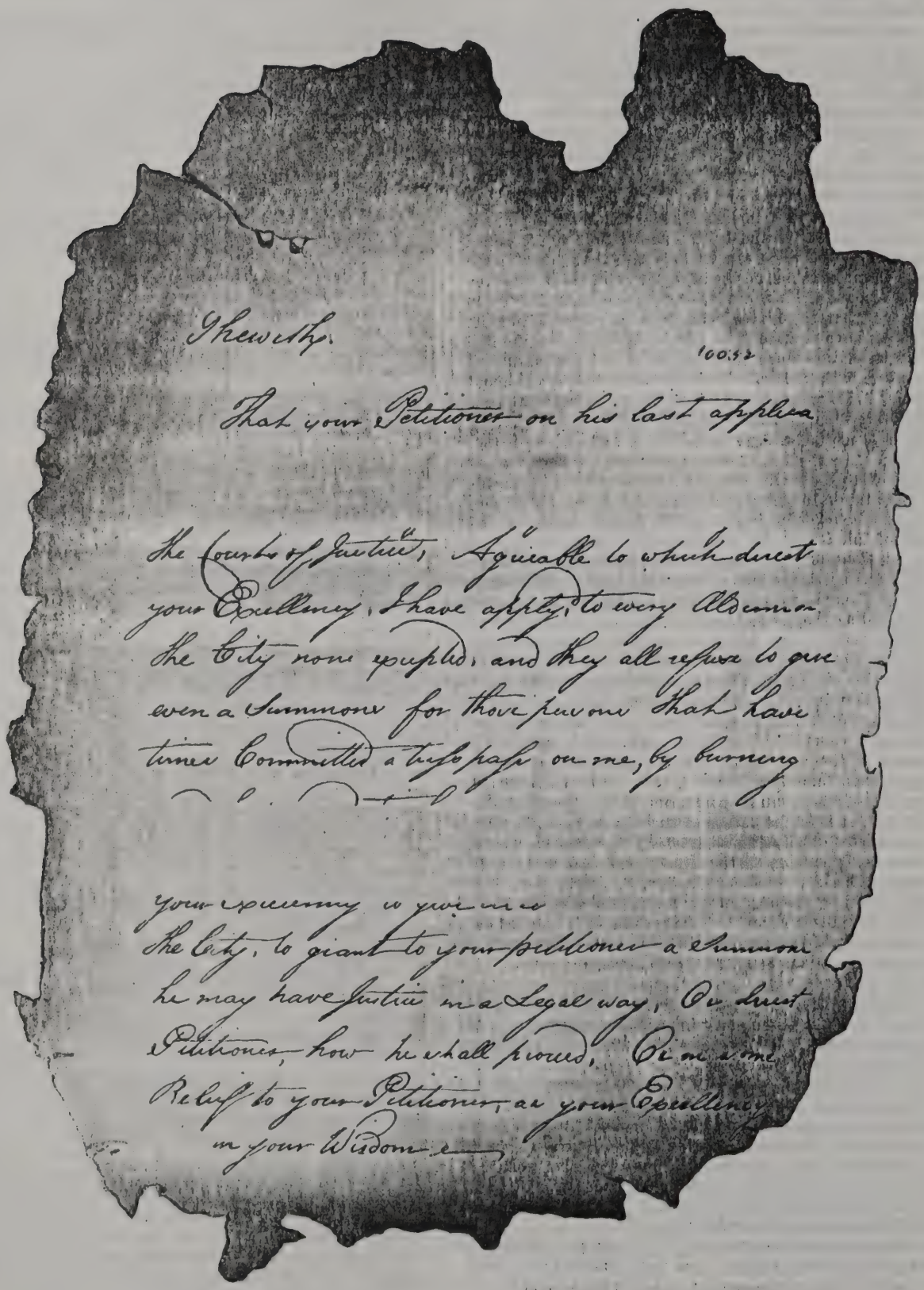
JACKSON EX. DEM. WILLIAM GILLILAND AND OTHERS AGAINST WOODRUFF AND DOTY.

Reported 1 Cowen 276 Decided August 1823

Ejectment, for one acre of land, at Salmon River [276] in Plattsburgh, Clinton county, called the Fairman lot, and for one half acre of land adjoining the same, on the north; tried before his honor Mr. Justice Woodworth, at the Clinton Circuit, June, 1821.

The suit was commenced in May term, 1818, the defendants then being in possession. The plaintiff, in deducing his title, showed, 1. Letters, patent, under the colonial government of New York, to John Friswell, dated May 7, 1765, for a tract of land called Friswell's Patent, which included, the premises in question. 2. A deed of conveyance, in fee, of that patent, from Friswell, the patentee, to William Gilliland, the father of William Gilliland, the lessor of the plaintiff. This deed was dated the 7th August, 1765. Wil-

Plate Twenty-eight



Sheweth.

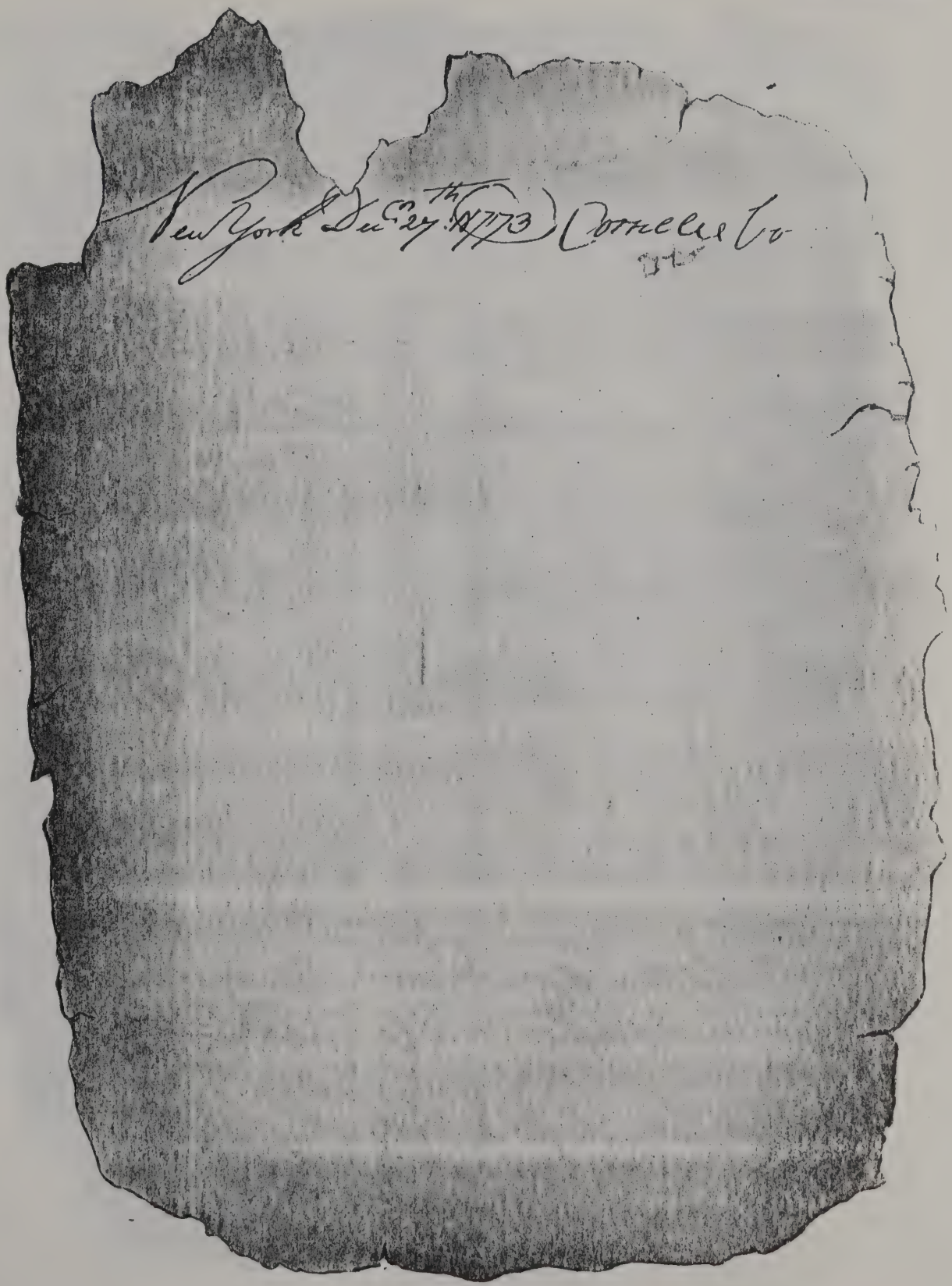
1003.2

That your Petitioner on his last applica

the Courts of Justice, Equitable to which direct
your Excellency, I have apply, to very Aldermen
the City now equpled, and they all refuse to give
even a Summons for those persons that have
times Committed a trespass on me, by burning

your excellency to give me
the City, to grant to your petitioner a Summons
he may have Justice in a Legal way, Or direct
Petitioner, how he shall proceed, Or in some
Relief to your Petitioner, as your Excellency
in your Wisdom

Plate Twenty-nine



to complain to your Excellency
And not of your Excellency

Your Excellency perhaps may think it
strange that your Petitioner does not set forth
that he has applied to the Mayor for the Writ
of Summons Wanted — The Reason is, that your
Petitioner has the Opinion of a Lawyer of this City
that the Honourable Council, the Mayor, the
Recorder, & the Members of the Assembly, are by a
Law now in force, Excused from acting in any
of those trifling matters, as a Single Member of
Justice, therefore your Petitioner did not apply
to the Mayor

Sir the Reason why your Petitioner
did not apply to the Chief Justice, was, that your
Petitioner has only been Endeavouring to take
the Possession of that part of his Estate in this
City, that was Vacant, and is yet, and lay
to the Common and Publick Street, and not
Possession of no Person

Plate Thirty-one

That action was brought by one Brower as heir to this Estate, and I shall not say but the tryal was full and fair

But your Excellency will observe, he could not prove himself the heir to the Estate, and therefore failed. Does it argue that Bogardus your Petitioner cannot prove himself the heir, because Brower could not — So far from this, That your Petitioner is able to produce some of the Jury that sat on the tryal in Browers case that will declare, that upon that tryal, it really did appear, that the Estate did belong to your Petitioner, and had the action been brought in his name, On the same Evidence they must have given the Cause to your Petitioner

Much is said about a title being gained by Possession, against your Petitioner

But your Petitioner thinks he is able to shew that a title has not been

Therefore is desirous to have a

Petitioner
for the Siging and Secuenty of
only come into Court and declay that
Demanded an Impossibility of them, De
them to delivor up, what they had not got
And of Cowrse your Petitioner must be nowe
with cost, and the matter in dispute neve
by it — and when ever your Petitioner Attemp
to build and Improve again, they would come
burn and consume, not only his Buildings but
even your Petitioner, as he understands he has
Often been threatned — Therefore there is no
way that your Petitioner can devise, but to
his Personal Action, for the damages he sus
Unless those that pretend a Claim, will open the
way, to have it sutled by a due course of Law —

Your Petitioner further begs leave to
Suggest to your Excellency; That your Peti
humbly conceives your Excellency has been mis
as to what Mr Scott says, with Respect to
Matter — Your Excellency will Re
That when I was with your Excellency on
application, Your Excellency Infor

Plate Thirty-three

That your Excellency
Excellency standing in the Ca
to the People of the Province, Would we
your Petitioner had Justice, and that your
Excellency would either appoint, or Recom
it to the Chief Justice to appoint an Atto
to assist your Petitioner in the matter

And your Petitioner shall Ever
Pray.

New York Dec: 29. 1773

Cornelis Cloyuus Dus

liam Gilliland, the father, died after our statute of descents, leaving William Gilliland, the son, and lessor of the plaintiff, Jane, his daughter, wife of John Bleecker, and two other daughters, his heirs at law: so that one-fourth descended to William Gilliland, the son, under whose demise the plaintiff claimed, in this suit, the one fourth of the premises in question. In 1787, John Bleecker, before mentioned, who was a surveyor, and then the brother-in-law of Gilliland, the lessor, by his intermarriage [277] with Jane, (G.'s sister) claimed title to, and run the outline of Friswell's Patent. But by a mistake of the boundaries, he contracted the outline, on the side north and west, next adjoining to the Plattsburgh Patent, which was there bounded upon Friswell's, so as to leave the premises in question, with a large tract of land besides, to be taken by the Plattsburgh Patent. Gilliland, the lessor of the plaintiff, supposing this survey correct, spoke of it as being so, and sold a farm to one John Brown, and gave him a deed of conveyance, in 1798, and directed him to take possession under it, according to Bleecker's outline, on the side of the Plattsburgh Patent; and Brown had located and improved his land accordingly, to the time of the trial. William Brown, his brother, purchased and held in the same manner, a farm adjoining to and lying on the south of John's farm. Gilliland directed both him and his brother to locate according to Bleecker's survey.

Plattsburgh Patent, granted in 1784, was, in terms, bounded upon the north and west lines of Friswell's; and shortly before Bleecker's survey, the proprietors of the former had located in relation to Friswell's Patent, [278] so as to leave a considerable gore between their pantent and Friswell's as located by Bleecker. They had surveyed and laid out their patent into lots, corresponding nearly with the north and west line of Friswell's Patent, as afterwards discovered, and now claimed by the plaintiff. They had given conveyances for several of their lots, which were uniformly described as bounding on Friswell's Patent; and done other acts recognizing the true north and west lines of this patent. Friswell's Patent was bounded south by Stewart's Patent, which bore the same date with Friswell's.

The defendants, besides insisting that Gilliland had concluded himself, by his recognition of Bleecker's survey, relied upon an adverse possession of 20 years, in bar of the plaintiff's claim. For this purpose, they gave in evidence a quit claim deed, from Zephaniah Platt to Nathaniel Platt, dated Sept. 6, 1794, which purported to convey land between the lotted lands of Plattsburgh Patent and Friswell's Patent, and referred, for that purpose, to certain boundaries of the patents. But, as the lotted lands of Plattsburgh were all bounded on Friswell, it, in fact, included no land. But, had Bleecker's survey been correct, and the lots in Plattsburgh had not been bounded on Friswell, it would have included a large tract of land of about 783 acres, which intervenes between that survey and the Plattsburgh Patent, as originally allotted. Of this large tract, the premises in question are a part. Under this deed one Cochran, who was employed by the grantee, N. Platt, made the first improvement, in 1794. And the occupation and improvements of Salmon River Village, also included in the deed together with the premises in question, commenced and continued under N. Platt, down to the present defendants.

In 1797, there was a clearing of about two acres, upon this tract, in a place now called the Salmon River Village, and a small clearing in another part, to what extent did not appear. But the Fairman place, (part of the locus in quo) was not cleared till 1799, and the half acre, on the north, the other part of the locus in quo, not till two or three years afterwards.

The whole tract of 783 acres, was claimed by N. Platt and one Moses Soper, while it was in woods. [279]

A short time before the trial, Friswell's Patent had been carefully surveyed, by William Keese; by whose survey it was clearly ascertained, that the premises in question lie within the true bounds of that patent. Keese, on his examination, as a witness, said he had heard Gilliland, the lessor of the plaintiff, say something about holding under Bleecker.

The more minute details of evidence presented by the case, are fully stated by the Judges, in delivering their opinions. It is therefore not necessary to notice them here.

A verdict was taken for the plaintiff, subject to the opinion of the Court upon a case, with liberty to turn the same into a bill of exceptions, or special verdict.

The points submitted, were,

1. Whether the deed from Z. Platt, and the possession taken under it, bars the plaintiff's right of entry.

2. Whether the location of Friswell, by Bleecker, in 1787, and the recognition thereof by Gilliland, the lessor of the plaintiff, in directing Brown, by what line he should be governed, is a conclusive establishment of the line where Bleecker run it.

WOODWORTH, J. The premises in question are included within the bounds of a patent granted in [283] 1765, to John Friswell. William Gilliland, one of the lessors, deduced a title, under Friswell, to one-fourth part. It was contended, on behalf of the defendants, that, in 1787, John Bleecker, who claimed Stewart's and Friswell's Patents, ran the outlines, and that his survey did not include the premises; that Gilliland had recognized the line of Bleecker, and held under him, and was, therefore, concluded by it. Cochran, who accompanied Bleecker in the survey, says the lines would not include the defendant's possession. That Bleecker made a mistake in tracing the lines, and that the patent extended considerably farther west and north, is proved, not only by the acts of the proprietors of Plattsburgh Patent, in laying out their lands, which are bounded on Friswell, but also, by the recent survey of Keese, which was not controverted at the trial. Admitting Bleecker to have been the proprietor, the defendants cannot avail themselves of the mistake. The evidence of Gilliland's holding under Bleecker, is very loose and unsatisfactory. Keese, the only witness who testified as to the fact, says that he heard Gilliland say something about holding under him. In 1799, Wm. Brown applied to purchase. Gilliland agreed to let him have a farm next south of John Brown's, who was to have one adjoining the north line of Friswell's Patent. Gilliland stated, that Bleecker had run out the patents; that they would find his north line; and directed the farms to be laid out accordingly. They did so, and have occupied and improved, according to the Bleecker line, to the present time. It is evident, Gilliland intended to bound the farm of Brown on the true north line; for to that he refers. As Bleecker had surveyed the outlines, there does not [284] appear to have been, at that time, any cause for doubting its correctness. He, accordingly, directed Brown to be governed by it. If it be conceded that Gilliland held under Bleecker, upon what principle can strangers, without

title, and holding adversely, be permitted to avail themselves of a manifest mistake, or derive benefit from acts done by the plaintiff, under a misapprehension of his right? The line was not run to quiet adjoining possessions—the defendants' possession commenced long after. Neither was it run to settle the line between Friswell and Plattsburgh. It is true, the proprietors of the latter patent were bounded on the former; but they had, previous to Bleecker's survey, ascertained the true line, (which corresponds with the one set up by the plaintiff) and located and divided their patent. The unfounded claim, of a gore between the two patents, was set up long after, and not until 1794. It was then asserted with caution, and conveyed by a quit-claim deed. In whatever point of view the survey of Bleecker and the acts of Gilliland are considered, they interpose no barrier against the plaintiff's title.

The remaining question is—have the defendants made out an adverse possession? The actual occupation of the premises, by the defendants, is less than twenty years, as appears by the testimony of Winchell. He says that Moses Soper had cleared about two acres, not including the premises, at Salmon River Village, in 1797; that he, and Nathaniel Platt, claimed the whole property, while it was in woods. The validity of this claim will next be considered.

In September, 1794, Z. Platt executed a quit-claim deed to Nathaniel Platt, for 783 acres of land, purporting to convey, thereby, lands lying between the east and south lines of allotted lands in Plattsburgh, and the line of Friswell's Patent. On examining the boundaries, and the map annexed to the case, it will be found not to include any land; for there is no gore between the two patents. The description follows: "Beginning at the distance of 7 chains, 8 links, north from the south east corner of lot No. 99, in the second division of Plattsburgh; thence east, 27 chains and 50 links, to John Friswell's patent." Now, as it has been shown, that Friswell's Patent joins on Plattsburgh, [285] the line cannot be extended easterly. If it was so extended, it would run on lands included in that patent, which is not admissible, under the words of the deed. The next course is to the northwest corner of the patent, which must be understood the true northwest corner of Friswell, as proved by the plaintiffs; thence east, in the east bounds of Friswell's Patent, until the north line, to the lotted land in Plattsburgh, will include 783 acres, between that line and lot No. 101, in the second division of Plattsburgh. By tracing these lines, on the map, it will be seen, that a line, only, is given. No land is included: consequently, **the deed is a nullity, inasmuch as nothing is granted.** The question, then, is, whether a claim of title, under such an instrument, and an actual occupancy of part, can constitute a good adverse possession, beyond the parcel so occupied.

It is well settled, that a continued possession, for 20 years, under pretence or claim of right, ripens into a right of possession, which will toll an entry. It has never been considered necessary, to constitute an adverse possesion, that there should be a rightful title. (Jackson v. Wheat, 18 John. 44. Smith v. Lorrilard, 10 John. 356. Smith v. Burtis, 9 John. 180. 13 John. 120. 2 Caines, 83.) **The party who relies on an adverse possession, must, in the language of Kent, Chief Justice, in Jackson v. Shoemaker, (2 John. 234,) show "a substantial inclousre, an actual occupancy, a pedis possessio, which is definite, positive and notorious, when that is the only defence to countervail a legal title:" and in Doe v. Campbell, (10 John. 477,) it is said, "adverse possession must be marked by definite boundaries, and be regularly** continued down, to render it availing." (1 John. 156.) There is no doubt, that actual occupancy, and a claim of title, whether such claim be by deed or otherwise, constitute a valid adverse possession, **to that extent. But, when a party claims to hold, adversely, a lot of land, by proving actual occupancy of a part only, his claim must be under a deed or paper title.** This distinction has been uniformly recognized, and acted upon in this Court. It is on this latter ground, **the defendants** must rest, if their possession can avail. Their defence is, that Z. Platt, in [286] 1794, conveyed 73 acres to N. Platt, including the premises; that the first improvement was made in 1794, under Platt, being a small parcel, not exceeding 2 acres, which, together with the premises in question, afterwards taken under him, have been continued to the time of commencing this action. This **proof does not make out an adverse possesion to the premises. Color of title, under a deed, and occupancy of part, is sufficient proof as to a single lot; yet it follows, from the doctrine laid down, that the deed, or paper title, under which the claim is made, must, in the description, include the premises. If the title is bad, it is of no moment; but, if no lands are described, nothing can pass. The deed is a nullity, and never can lay the foundation of a good adverse possession, beyond the actual improvement.** There is no evidence here, to show **how far Platt's claim extended, unless resort is had to the deed.** Boundaries, therefore, including the premises, were indispensable, in order to give this defence the semblance of plausibility. The defendants stand on the same ground as **if no deed had been produced; and, then, the possession cannot extend beyond the place actually occupied.**

In Jackson, ex dem. Dervient, v. Lloyd, decided October term, 1820, but not reported, **it appeared that the defendant had a deed for lot No. 4, but took possession of lot No. 5, adjoining, believing it to be his lot, and claiming it as such. It was held, that the defendant could not establish an adverse possession, to the whole lot, by the actual improvement of a part, because no part of No. 5 was included in the deed.**

But, if the deed had been perfect in the description, and included 783 acres of Friswell's Patent, the occupancy of a part would not make out an adverse possession to the whole quantity conveyed. **The doctrine of adverse possession, applied to a farm, or single lot of land, is, in itself, reasonable and just. In the first place, the quantity of land is small. Possessions, thus taken, under a claim of title, are generally, for the purpose of cultivation and permanent improvement. It is, generally, necessary to reserve a part for** woodland. Good husbandry forbids the actual improvement of the whole. The possessions are, usu- [287] ally, in the neighborhood of others; the boundaries are marked and defined. Frequent acts of ownership, in parts not cultivated, give notoriety to the possession. Under such circumstances, there is but little danger that a possession of twenty years will be matured against the right owner; if it occasionally happens, it will arise from a want of vigilance and care, in him who has title. It is believed, that no well founded complaint can be urged against the operation of the principle; but the attempt to apply the same rule to cases where a large tract is conveyed, would be mischievous indeed. **Suppose a patent granted to A., for 2,000 acres; B., without title, conveys 1,000 of the tract to C., who enters under the deed, claiming title, and improves one acre only; this inconsiderable improvement may not be known to the proprietor, or if known, is disregarded for twenty years. Could it be gravely urged, that here was a**

good adveres possession to the one thousand acres? If it could, I perceive no reason why the deed from B. to C. might not include the whole patent, and after the lapse of twenty years, equally divest the patentee's title to the whole; for there would exist an actual possesison of one acre, with a claim of title to all the land comprised in the patent. **No such doctrine was ever intended to be sanctioned by the Court. It may, therefore, be safely affirmed, that a small possession,** taken under the deed to N. Platt, **cannot, under any circumstances, be a valid possession of the whole 783 acres, but is limited to the parcel improved.** If the doctrine contended, for prevails, it would sanction this manifest absurdity, that a possession under Platt's deed, which conveyed no title would, as to its legal effect, be more beneficial than a possession taken under the proprietors of Friswell's Patent. where there is not only title, but a good constructive possession, in consequence of the grant, and actual occupancy and improvement of a part. It cannot be useful to pursue the subject farther.

I am of opinion that the plaintiff is entitled to judgment, for an undivided fourth part of the premises.

SUTHERLAND, J. It is perfectly clear from the evidence in the case, that the true location of the [288] Friswell Patent under which the plaintiff claims title, includes the premises in question. He is, therefore, entitled to recover, unles he in concluded by the survey of Bleecker, made in 1787, or by an adverse possession of twenty years in the defendants, or in them and those through whom their title is derived. Both Friswell's and Stewart's patents were granted in 1765. The Plattsburgh Patent, under which the defendants claim, was granted in 1784, and was bounded on the west and north lines of Friswell's Patent; and in the allotment of Plattburgh Patent made by the proprietors, in 1787, all the lots bordering upon Friswell's Patent, were located upon the lines which the plaintiff sets up as the division lines between the two patents. This leaves the premises in question within Friswell's Patent. The recognition of the division lines between the patents, by the proprietors of the Plattsburgh Patent, are as binding upon the defendants, as are the survey and conveyances made by Bleecker & Gilliland, upon the plaintiff. But, in truth, neither party are concluded; and what have been shown to be the true division lines must prevail, unless the right of the plaintiff has been barred by an adverse possession.

In 1794, Zepheniah Platt, the original proprietor of Plattsburg Patent, made a conveyance to Nathaniel Platt, of seven hundred and eighty-three and a half acres, particularly described in the conveyance, and which was unquestionably intended to embrace the premises in question. This conveyance was made in good faith on the part of Mr. Platt, upon the supposition, that the survey of Bleecker gave the true north and west lines of Friswell's Patent; for, in that event, the land intended to be conveyed would have belonged to the Plattsburgh Patent. Under this conveyance, the grantee, by his agent, immediately entered, and made improvements upon a part of the land conveyed. But it appears from the testimony of Martin Winchell, a witness on the part of the defendant, that the acre called the Fairman place, and the half acre adjoining it on the north, being the premises for which the suit was brought, were not cleared—the first parcel until 1799, and the one-half acre, until 1801, or 1802. **This suit was commenced** [289] **in May Term, 1818. The defendant, therefore, failed in establishing an adverse possession of twenty years, unless the small improvement made between 1794 and 1797, at what is now called the Salmon River Village, is to be considered, constructively, a possession of the premises in question, and every other part of the tract conveyed by the deed of 1794.**

Upon this point, it is contended by the plaintiff, 1. That the deed from Zephaniah to Nathaniel Platt, contained a void description, embracing no land whatever; that the possession alleged to have been taken under it, was therefore, a mere naked profession, without color of title, which could never ripen into a right beyond the extent of actual improvement; or, 2. That admitting the description in the deed to cover the whole tract intended by it, thereby giving color to the claim of title, by virtue of an adverse possession to that extent; even, in the latter case, the claim must be confined to the limits actually enclosed and improved under it.

I do not think it necessary to discuss the first objection; because the second is, in my opinion, sufficient to defeat the claim of the defendants. There is no proof in the case of an attempt on the part of Nathaniel Platt, or of those who claim under him, to designate the land embraced in his conveyance by a possession fence, or even a line of marked trees. This is a defence, for the support of which strict proof has always been required. **In Jackson v. Schoonmaker, (2 John. Rep. 230,) an inclosure by a possession fence, cut round the premises, was held not to be evidence of an** adverse possession, **sufficient to toll the entry of the true owner, after twenty years. The Court there say, "This mode of taking possession is too loose and equivocal. There must be a real and substantial enclosure, an actual occupancy, a possessio pedis, which is definite, positive and notorious, to constitute an adverse possession, when that is the only defence, and is to countervail a legal title."**

There is nothing in the defendant's case, to justify a constructive extension of the possession, beyond the actual improvement; which, not embracing the premises in question, the plaintiff is entitled to judgment. This [290] must be for one undivided fourth part, only, of the premises. The case shows no title in the plaintiff, beyond the share which descended to Wm. Gilliland.

SAVAGE, CH. J., concurred in a judgment for the plaintiff, for one undivided fourth part of the premises; and the Court gave Judgment accordingly.

PRIDEAUX V. DES MOINES JOINT-STOCK LAND BANK.

District Court, D. Minnesota, Second Division. August 16, 1929.

Vol. 34 F. (2d) 308

SANBORN, District Judge.

The Legislature of Minnesota, in 1925 (chapter 280, Session Laws 1925), amended section 9610, General Statutes 1923, so as to permit foreclosure for installments without discharging the lien of the mortgage. The claim of the plaintiff is that this could not affect mortgages made prior to April 20, 1925, the date of the approval of the act; that it was not retrospective, and that, if it was, it would be unconstitutional, because it would have the effect of depriving the plaintiff of his property without due process of law and would impair the obligation of his contract.

The plaintiff further claims that the notice of mortgage foreclosure sale was insufficient, because it did not state that the land was to be sold subject to the unpaid installments.

(1) The mortgage itself provided that the "mortgagee

may foreclose only as to the sums or any amortization installment matured and past due without injury to the security of this mortgage for payment of the balance due and remaining unpaid, or the displacement or the impairment of the lien thereof for the balance unpaid but preserving all and the same." This clause was unenforceable prior to April 20, 1925, because of section 9610, General Statutes Minnesota 1923. The plaintiff says it was void, being unlawful. It was merely ineffectual prior to the enactment of chapter 280, because the law of the state did not then permit more than one foreclosure as to the entire tract covered. **When the Legislature, by amendment, removed the obstacle in the way of its enforcement, it authorized just what was done in this case. There was nothing evil or contrary to public policy in such a provision, and the fact that under the law it could not be exercised at the time the mortgage was made would not render it void.** See 12 C. J. 1070. For a somewhat analogous situation, see cases refered to in Buder v. First National Bank et al. (C. C. A.) 16 F. (2d) 990.

(2-4) But, even if the mortgage itself did not authorize what was done, it would not change the result. Chapter 280 was by its terms an amendment to section 9610, which related to foreclosure of past, present, and future mortgages. It was clearly intended to apply to past mortgages, not for the purpose of changing vested rights of a substantial character, but simply to change the law, so as to permit foreclosure for installments without exhausting the entire mortgage lien. **The mortgagor had no vested right in any remedy available to the mortgagee in case of default.** 12 C. J. 974. Oshkosh Waterworks Co. v. Oshkosh, 187 U. S. 437, 23 S. Ct. 234, 47 L. Ed. 249; Crane v. Hanlo, 258 U. S. 142, 42 S. Ct. 214, 66 L. Ed. 514; Conley v. Barton, 260 U. S. 677, 43 S. Ct. 238, 67 L. Ed. 456; State ex rel. National Bond Co. v. Krahmer, 105 Minn. 422, 117 N. W. 780, 21 L. R. A. (N. S.) 157.

The Legislature could not have taken away the mortgagor's right to redeem or to retain the possession of the premises until the right of redemption expired (Willis v. Jelineck, 27 Minn. 18, 6 N. W. 373), **but it could either enlarge or diminish the remedy available to the mortgagee, so long as it left to it some effective way of enforcing its rights** (12 C. J. 1071). **It is true that the statutes of the state as they existed at the time, entered into and became a part of the contract expressed in the mortgage deed; but it is equally true that the parties who made it did so in contemplation of the right of the Legislature to enlarge or restrict the remedy of the mortgagee. It is immaterial whether the change in the law benefited the mortgagor or the defendant.** There is not the slightest doubt that chapter 280 gave to the defendant the right to foreclose as it did.

The case of Gunmaer vs. Jackson, 2 Cowen 555, presents a question, which, in view of the fact, that the Bogardus' grant of 1667, and the Trinity grant of 1705, emanate from the same source, seems to be directly in point, and precludes Trinity, under a subsequent grant, from setting up an adverse possession, even as against the individual.

The improvements and developments upon the island, before the Revolution, as the preceding pages have shown, preclude any other deduction than that this land was not improved or even enclosed; in fact the lands that were a part of the Company's Farm, Duke's Farm, King's Farm, Queen's Farm, had not been improved to Murray Street; for when in 1750 a site was proposed for the college, history records that this was uncultivated and vacant land in that locality, and the college was built on King's Farm.

Another point made by this Gunmaer case, is that adverse possession could not be asserted against the Crown. The Crown was out of possession since the confirmation grant to the children and heirs of Anneke Jans Bogardus in 1667; they had no power to re-grant until they had recovered the possession. Under this doctrine, waiving aside the question of no northern boundary, their grant was a nullity, and of no avail to support a claim of adverse possession.

Excerpts of this case here follows:

Gunmaer vs. Jackson, 2 Cowen, 555:

> "That the people were not in possession at the time of their grant is a sufficient defense. That they had no title except what they claimed under the deed of the lunatic. This being void, the case was the same as if they had previously conveyed all their title to another; and had nothing to grant. The patent would have been void at the common law. A sale of lands holden adversely by commissions appointed by an order of the court, under the act for partition of lands, has been holden void. **The people should prosecute their action for ejectment, and recover possession before they have power to grant.**
>
> * * * * * *

Page 563:

> "Evidence of adverse possession was properly rejected, **because no one can set up an adverse possession to avoid the grant of the state.** This question did not arise, nor did the court pretend to dispose of it, in Jackson v. Hudson (3 John Rep. 375) as supposed on the other side. It was put upon the nature of the possession. There was a patent from the state, and various conveyances thence down to the lessor, while the Indian possession existed; and the objection of adverse possession applied to these intermediate grants. The Court go on to consider the law of adverse possession, as it relates to individuals and demonstrates that it was not, in that case, sufficient to avoid a private grant.
>
> But the people cannot be disseised, nor, consequently their grant avoided by adverse possession. The king cannot be disseised. This is said in so many words in Talor v. Horde (1 Burr 101-3 Bl. Com. 257 S. P.). It is said on the other side, that the statute avoiding the conveyance of lands held adversely, is but an exposition of the common law. This is true except as to the penalty. If here was an adverse possession what is to prevent the patentee being sued for the penalty? Neither at common law nor by the statute is the conveyance of the people avoided.
>
> But the defendant could not set up an adverse possession even as against an individual. Both parties derive title from the same source—the lessor under a title derived from Merritt—the defendant under a sheriff's sale upon a judgment against Merritt, subsequent to the deed."

Page 565:

> "It is conceded that adverse possession avoided a deed at the common law, and we need not therefore resort to the statute. The Government have attempted to grant lands which, at the common law, they have no power to pass. I agree that the people cannot be disseised; but the very cases to which we are referred on the other side show that they may be out of possession. If an alien purchase land, the king has a right to it, but he is out of possession, and the land may be holden adversely to him until office found. So of the people. (Jackson v. Beach 1 John. Cas. 399, etc.) They cannot enter till office found, but when in possession I admit they cannot be disseised; the King cannot change or dispense with the common law (Com. Dig. Perogative (D. 7)) and is therefore subject to the rule which forbids anyone to convey unless in possession. In all cases where an entry would be necessary for the subject, an office found is necessary for the

King. This is the manner in which he is to enter, and as the same rule applies to his right of entry as to that of the subject, so his right of granting is circumscribed by the same restriction. Another case showing the manner in which the King's right of entry is to be exercised is that of the Wardens and Commonalty of Sadlers (4 Rep. 58). It was there held that where the King's tenant dies when another is in possession at the time of the escheat, there the king shall not be adjudged in possession till the others seizin and possession are removed.

Page 568:

The reason which makes a deed void, because executed by a grantor out of possession, is for avoiding of maintenance, suppression of right, and stirring up of suits; and, therefore, nothing in action, entry or re-entry can be granted over; for so, under color thereof, pretended titles might be granted to great men whereby right might be trodden down and the weak oppressed which the common law forbiddeth, as men to grant before they be in possession.

The discussions in the cases of Halstead, and Frost excerpts from which follow, are of particular moment and importance, on the question of the extent of a substantial enclosure necessary to support an adverse possession; on the legislative power under the constitution to interfere with vested interests: that possession with knowledge that he had no title; that the property was not a part of the lands described in his own conveyance, was outside of the land so described, and, as it were a gore, that such knowledge precludes the claim of adverse possession, for the possession is with knowledge that he had no title, that title was in another. That entry as an intruder would not support a claim of adverse possession; that actual disseizin with expulsion, and in the Bogardus case nothing appears to indicate an expulsion until Revolutionary days, would be necessary:

JACKSON, EX DEM. TEED AND OTHERS, AGAINST HALSTEAD [216]

Reported 5 Cowen 216. Decided Oct., 1925.

Ejectment, for part of farm No. 14, and a part of Delaware river adjoining it, in lot No. 41, in the Hardenburgh patent, tried at the Delaware circuit, June 7, 1824, before Walworth C. Judge.

On the trial the plaintiff deduced a title by a lease in fee, dated January 1, 1793, from one Desbroses to Ingersol, who assigned the lease to Levi Palmer, November 4th, 1801. This lease was of certain premises, described as beginning at the southerly side of the Delaware river, at a birch tree; and running several courses round certain lands on the southerly side of the river, to the river, at a tree standing on the low lands, west from the place of beginning, "and thence easterly, up said river, as it winds and turns, (including the same,) to the place of beginning, containing 130 acres of land." Under these words, the plaintiff claimed a small island in the Delaware, opposite the shore which was confessedly included; and proposed to show that the defendant was in possession of this island; but the Judge overruled the evidence.

Palmer was the common source under which both parties claimed title; and the plaintiff proved an assignment of the lease from him (Palmer) to Jennings, dated October 17th, 1811, who devised one-half of all his [217] real estate to his wife in fee, and the other half to her for life, remainder over in fee. She intermarried with Teed, and they were both named as lessors of the plaintiff.

The defendant, in order to deduce a titlte from Palmer to himself, relied on an assignment endorsed upon the lease, dated March 14th, 1806, from Palmer to Ebenezer Bennet, being before the assignment to Jennings; and a re-asignment, also endorsed on the lease, from Bennet to Palmer, dated February 12th, 1807. This re-assignment contained an exception of 8 acres and 17 rods, as sold by Bennet to Halstead, the defendant. The assignment to Bennet was not proved by the subscribing witness; and the plaintiff's counsel objected on this ground, to its being read; but the Judge held that, taken in connection with the re-assignment, it was to be considered as in proof; and it was accordingly read.

The defendant then gave in evidence a sub-lease in fee from Bennet to himself, dated April 7th, 1806, for two small lots of land, parcel of the premises contained in the original lease, describing them particularly; but the description did not include a small strip of land lying immediately on the bank of the river; though it was intended to include this; and the defendant claimed to have possessed it adversely at the time of, and so as to avoid the assignment from Palmer to Jennings.

The circumstances constituting this adverse possession are stated at large in the opinion of the Court, with such other particulars as, in connection with the above, will sufficiently elucidate the nature of the controversy, and render a farther history here unnecessary.

The Judge said he should charge that, as to the strip of land, a good adverse possession was made out; that the assignment to Jennings was, therefore, void pro tanto; that he had established a good title to the land described in the sub-lease; and that the island did not pass to Ingersol by the words of the original lease; upon which,

The plaintiff submitted to a nonsuit, with leave to move to set it aside.

Curia, per Woodworth, J. The plaintiff made out a title to farm number 14, as described in the leases [218] given by Desbroses to Ingersol; and claimed to recover of the defendant, three certain parcels alleged to be in his possession, and described on the map annexed to the case as follows: one lot, of 6 acres, adjoining the Delaware river; one lot of 2 acres, 17 rods; a strip of land lying between the north bounds of the last lot and the river; and also a small island, claimed as included within the bounds of the original lease.

The defendant claimed title from the same source. On the back of the lease produced by the plaintiff, was written an assignment from Levi Palmer to Ebenezer Bennet, dated March 14th, 1806. The plaintiff objected to its introduction, unless proved by the subscribing witness. The Judge admitted it without such proof; because there was a re-assignment from Bennet to Palmer, of February 12th, 1807, also endorsed, which was not questioned. It is proper, here, to state, that the re-assignment from Bennet contained an exception and reservation of 8 acres, 17 rods, being the two parcels first described. As between Ben- [219] net and Palmer the acceptance of a conveyance by the latter from the former, containing a reservation of part, was an admission of the right of Bennet to the portion excepted; and Palmer, being a sub-lessee, was estopped from alleging the contrary. (Co. Litt. 352. Rawlyn's case, 4 Rep. 53.) Besides, the acceptance of a re-assignment, endorsed on the same paper that contained the assignment, seems to be an explicit acknowledgment of the authenticity and genuineness of the latter. It is not, therefore, admissible that Palmer, or those claiming under him, be permitted to deny

the execution. The Judge was correct in receiving the evidence.

On the 17th of October, 1811, Palmer conveyed to Jennings, the premises described in the original lease, without making any exception. The lessors of the plaintiff are the representatives of Jennings. They acquired no title to the 8 acres and 17 rods.

With respect to the island, the plaintiff's right depends on the expression in the original lease. The farm demised lies on the south side of, and adjoining the river. The last course but one extends to the river; "thence up the said river as it winds and turns (including the same) to the place of beginning." The question is, what do these words grant? It is laid down in Co. Litt. 4, b, that " if a man grant aquam suam, the soil shall not pass; but the piscary within the water passeth therewith." The same rule is recognized in Com. Dig. Grant, (E. 5.) No right, then, to the island was acquired; and all testimony, as to the defendant's possession of that part of the premises in question, was properly excluded.

The plaintiff is entitled to recover the small parcel of land lying between the 2 acres and 17 rods, and the river; unless the deed from Palmer to Jennings is inoperative, in this respect, by reason of an adverse possession, at the time it was executed. **The boundaries in the defendant's conveyance do not include this parcel. He cannot, therefore, rest on the ground of a good constructive posesssion; but must make out a pedis possessio, or actual occupancy, with claim of title. The adverse possession must be marked by a substantial enclosure, and continued [220] down, to render it available. (3 John. Rep. 234. 10 id. 477. 1 id. 156. 1 Cowen, 285.)**

It appears by the defendant's testimony, that a saw mill and dam, formerly erected on the premises, have gone to decay. The commencement of the fence, near the flat stone, designated on the map, is about one rod from the river; and lease some ground not enclosed. But it is in proof, that the fence, at this place, is as near to the river as the wash of the floods, and the make of the ground will permit. To apply the rule so strictly as to require the fence to be placed on the very margin of the river, where it would be liable to be swept away by the rise of water would be unnecessarily rigid; and not within the reason of the rule defining what shall constitute an adverse possession. It must be perfectly obvious, that such a location is evidence of a claim to the water's edge. With respect to the residue of the fence, it appears to have been built as near to the river as the land would permit. There is no valid objection on this ground. The fence was not continued the whole extent, to the upper corner. McGilvery says, it was discontinued in some places, where the bank and the growth on it, of themselves, formed a sufficient obstruction to cattle; that the northerly line is a high bank, unfit for cultivation, and covered chiefly with hemlock. Kinney, the surveyor, says the upper corner of the lot was not enclosed.

From the whole of the evidence, I understand that the small parcel was enclosed by a fence on all sides, exceping on the northerly line, where it extended a part of the way only; and at that portion of the line where it did not continue, the high bank served as a substitute. For the purpose of notoriety, as well as good husbandry, this was a substantial enclosure. Why require a fence, where nature had formed a sufficient barrier, to prevent the intrusion of cattle? The defendant sufficiently marked the extent of his possession. Suppose a lot of land is bounded on the one side by a navigable river, or a continued ledge of rocks, or a mountain of difficult ascent or descent, and that the other sides are well enclosed; would not this, with a claim of title, constitute an adverse pos- [221] session? It certainly would; because, in such a case everything had been done, that could reasonably be required to protect the crop, or denote exclusive occupancy. The case before us is analogous. The defendant's possession was adverse when Palmer assigned to Jennings; and so continued to the time of commencing the action.

The asignment, then, being, in relation to this parcel, void, the title never passed from Palmer; and, as he is not a lessor, the plaintiff cannot recover. Had there been a demise from him, the defendant's adverse possession would have been unavailing, as it falls short of 20 years.

I am of opinion, that the motion to set aside the nonsuit be denied.

Motion denied.

JACKSON, EX DEM. TEN EYCK AND OTHERS, AGAINST FROST. [346]

Reported 5 Cowen 446—Decided Feb., 1826.

The legislature have not the power to determine the rights of parties to land; either by themselves or commissioners, without the consent of the parties.

To constitute such an adverse possession as will bar a right of entry, it must be accompanied with what the law will consider, prima facie, a good title.

Where one entered, and possessed land, claiming it as a gore between two patents; held, that this was not such an adverse possession as would bar the true owner's right of entry; though continued for more than 20 years before ejectment brought.

The declarations of a tenant, that he has a deed, are inadmissible even to show in what character he claims; as whether adversely or not.

Ejectment for a lot of land in the Halfmoon patent, in the county of Saratoga, tried at the circuit in that county, December 29th, 1823, before Walworth, C. Judge.

At the trial, the plaintiff deduced a regular title under the Halfmoon patent, to Andreas Ten Eyck, who received a conveyance of the premises in question, September 25th, 1767, and died in October, 1802; having devised them to the lessors of the plaintiff.

The patent of Halfmoon was proved. It bore date the 30th May, 1687; and granted to Anthony Van Schaick in fee as follows: "a certain parcel or tract of land purchased of the Indians, proprietors, by license from the governor lying and being to the north and above the town of Albany; and is commonly called and known by the name of Halfmoon, which stretches up alongst the North River, from a certain place where are several streams of water, to a creek or kill, where there is a fall of water, which running into the land, hath his course into the North River; the said creek or kill and fall, being by the Indians, called Tienwen- [347] endahow, (now Anthony's kill); and from thence runs up the Maqueas kill, (now Mohawk river,) westward to a place called Dowaelsoiaex; and so strikes presently eastward, up alongst by the said streams of water and then to the North River afore mentioned; together with three small islands, lying in the said river, over against the tract or parcel of land called the Halfmoon aforesaid."

It appeared, that a line from the mouth of Anthony's kill directly to the Dowaelsoiaex, as run by the commissioners hereinafter mentioned, would exclude the premises in ques-

tion from the Halfmoon patent. But if run from the source of Anthony's kill, it would include them. The defendant insisted on the first, as the true line; but the Judge adopted the last.

The defendant then produced certain petitions to the legislature, purporting to be signed by the proprietors of the patents of Halfmoon, Clifton Park, and Kayaderosseras; and an act of the legislature pursuant to these petitions, passed in 1793, (noticed more at large in Jackson v. Davis, ante 123,) appointing commissioners to settle certain disputes about the boundary lines of these patents. The award of the commissioners was also produced, according to which the premises in question are not in Halfmoon patent. It appeared, however, that Andreas Ten Eyck, did not sign the petitions, or either of them, on which the statute was founded; and that by a subsequent act, in 1795, (vid. also Jackson v. Davis, ante 123) the legislature declared, that no person claiming title to land in these patents, by lease or purchase in fee simple, and who did not unite in the application for the appointment of commissioners, should be bound by their determination.

The defendant also offered in evidence a map of the patent of Kayaderosseras which joins Halfmoon patent dated November 12th, 1770, to show that the premises in question, were in Clifton Park patent, which was rejected by the Judge.

The defendant then proved that one M'Alpin occupied the premises in question in 1795, claiming them as his own saying they were in a gore; which, there- [348] fore, belonged to the settlers; that M'Alpin was in possession 25 years before the trial, and more than 20 years before the suit was commenced; that about 25 years before the trial he exchanged farms with one Miller, now deceased.

The defendant offered to show by Miller's declarations, that he had a deed from M'Alpin; which evidence was objected to, and excluded by the Judge.

The defendant then proved that Miller remained in possession 12 or 15 years, whence the possession passed through several hands down to the defendant.

The widow of Miller swore that when her husband exchanged with M'Alpin, he took a quit claim deed from M'Alpin, who said he thought he had a good title; that no rent had been claimed or called for; and the premises in question were not included in any of the patents; that this was 27 years before the trial; that she could not read; did not see any deed executed; but M'Alpin agreed to give one and her husband had a paper which he said was a deed from M'Alpin.

The Judge charged that the plaintiff had made out a sufficient title and location; and that the defendant had failed in establishing a bar by adverse possession.

Verdict for the plaintiff.

CURIA, PER SAVAGE, CH. J. The only difficulty in locating the patent, arises from the last course [349] running from the Mohawk river to the Hudson. The commissioners ran a straight line to the Hudson, at the mouth of Anthony's kill, by which they disregarded the course, "up alongst by the said streams of water, and thence" to the North River. It is perfectly well settled, that natural objects must control courses and distances. Although, therefore, the course is, "and so strikes presently eastward"; yet, we must take the whole together, adding, "up alongst by the said streams of water." What streams? Not the Mohawk, for the course leaves it; not the Hudson, for it ends there, after passing "up alongst by the said streams." The only other stream is Anthony's kill. I think, therefore, the plain location is as if the words, "presently eastward," had been omitted. It would then be, "and so strikes up alongst the said streams of water, and thence to the North river." Had such been the language, it seems to me, there would be no dispute about the location. The line must run to the source of Anthony's kill. The premises in question are, of course, included.

The Judge was correct in excluding the map of the Kayaderosseras patent. The introduction of it would only show that the proprietors of that patent claimed to the commissioners' line: and after the award in their favor, they were justified in so claiming, against all who entered into the submission; but surely not against such as never assented to it. The legislature never intended, that the award should be valid against those who held property in severalty, in the disputed tract, but had not signed the petition. (Jackson v. Davis, 5 Cowen, 135.)

But even had the legislature undertaken to settle this controversy themselves, without any submis- [350] sion, it will not be contended, that they had power to do so. If the grant conveyed to Halfmoon the territory in dispute, the proprietors had a vested interest, which the legislature could not divest, without their consent. If they had not this power as to the whole collectively, they had it not as against a single individual. The only object which the legislature could have had, was to give their sanction to the acts of the parties. If they attempted anything more, they clearly were assuming powers, which belonged to another branch of the government. If they converted themselves into a court of law, their acts, in that assumed capacity, were unauthorized by the constitution, and of course not binding on the parties.

The lessors of the plaintiff, then, having shown the legal title to be in them, and having never consented that their rights should be adjudicated upon, or interfered with, by the commissioners, or any body else, come now to demand their property, as if no such proceedings had ever taken place; and they are entitled to have it restored, unless they are barred by the statute of limitations.

The defendant, and those under whom he claims, have had possession for a sufficient length of time. The only difficulty is, as to the character of that possession. Was it adverse? M'Alpin was the first possessor; he claimed it as his own. Why? It was a gore; no rent had been demanded; and it of course belonged to the settlers. This amounts to saying that he claimed it, because he had no title; for if it was a gore, then the land belonged to the state. The idea that rent could be demanded, presupposes a landlord, and of course, an owner. The deed to Miller was given with this parol abstract of the title; it was not that he owned the land, because the fee was vested in him by purchase, or descent; but it was his, because there was no other owner. This is no title on which to rest an adverse possession. The purchaser, who took such a deed, knew that what he purchased amounted to nothing; for he was bound to know it.

I am aware that it was said in the case of Jackson v. Thomas, (16 John. 301,) that "if a man enters on land, without claim or color of title, and no privity exists between him and the real owner, and such person [351] afterwards acquires what he considers a good title, from that moment his possession becomes adverse." This doctrine must not be understood as authorizing the purchaser to consider a naked possession a good title. It must be, as I understand the law, such a title as the law will, prima facie, consider a good title. Otherwise there would be no uniformity. The character of the possession might be

made to depend upon the understanding of the tenant; and the same possession, which would be a good defense to one, would be worthless to another. And hence a possession under a French grant was held not to be adverse, because such a grant could not possibly be the source of a good title.

The possession of Miller, therefore, seems to me to be merely a continuation of M'Alpin possession, with no greater rights, but precisely of the same character. Admitting, therefore, that the possession of Miller's grantee was adverse, the length of time is not sufficient to bar the plaintiff.

In my opinion, the plaintiff is entitled to judgment.

Judgment for the plaintiff.

Preceding the decision in the Bogardus and Humbert cases previously referred to, there was before the court of errors the case of Livingston vs. The Peru Iron Company, in which the prevailing opinion, supported by ten of the eighteen members of the court, expressed the law of the State of New York most clearly, and the right of those who claim to hold lands by adverse possession. This case was often before the courts of the State of New York, and was declaratory of the law before the period of the Trinity cases, and establishes the following principles:

Where a person claiming to hold by possession has no written evidence of title, but claims by parol to be the owner, there must be actual occupancy, a pedis possessio, a substantial enclosure by fence, sufficient for the protection of the crops.

Where a lot is claimed to be held adversely, and part of it only improved, it must be under a paper title; and such paper title must describe the premises claimed. Without the paper title the possession is limited by the pedis possessio; but if no lands are described in it, nothing can pass, the deed is a nullity, and lays no foundation for a claim beyond the actual occupancy; that an adverse possession without paper title, is good only to the extent of actual enclosure, and no further.

It is sufficient that it is not denied that a deed from a foreign government cannot constitute a possession under it adverse, because such grant is absolutely void, affords no legal evidence of title, and possession taken under it is unavailable for any purpose.

If the title is bad, it is of no moment; but if no lands are described, nothing can pass. The deed is a nullity, and can never lay the foundation of a good adverse possession beyond the actual improvement.

Much stress is laid upon the point that every possession has, prima facie, the presumption of right in its favor, and authorities are cited to sustain it. There is no doubt that the principle is correct; but the presumption exists only until the true title is shown; when that is done, the law presumes the possession to be in subservience to the true title.

"There was, therefore, nothing like an adverse possession, independent of the deed executed by the Sperry's; and from the principles above referred to, and well settled, if that deed was a nullity, there was no adverse possession—certainly none beyond the spot where the ore was dug, and if without the deed, there was no adverse possession, and if the deed be a nullity, it is no more than blank paper."

"The deed was a nullity, and the defendants Murray and Palmer knew it to be so, it was therefore no foundation for an adverse possession. It did not divest the nominal grantor of any interest whatever, it vested no estate in the nominal grantee. He was a trespasser."

A man may think himself the true owner of property in the possession of another, and may take forcible possession under a claim of title; that is an adverse possession; but if, with a full knowledge that such property belongs to another, a person procures a forged deed, and enters under that, what is the quo animo: Is it the intent to enjoy his own, or to defraud another?

The principle has been well established by numerous cases, that the conveyance of land by a person out of possession, such land being held adversely by another, annuls the deed.

No transfer of real estate can be good, if the grantor has not the ability to deliver possession of it, as possession has ever been necessary, in order to acquire and ascertain the property in land; and without it, a man cannot be considered the complete owner, so as to transmit the inheritance to his heirs.

The law as laid down is that an estate made by fraud must be avoided only by him who had a former right, title, interest, debt or demand. A sale in open market by fraud, shall not bar a right which is more ancient, and a fraudulent gift shall not defeat an execution in respect to a former debt. In accordance with this authority, no person, except him who held title to an estate before the fraud was perpetrated, can avoid a fraudulent deed for such estate.

CASES
ARGUED AND DETERMINED [512]
IN THE
COURT FOR THE CORRECTION OF ERRORS
OF THE
STATE OF NEW YORK
DURING THE YEAR 1832—EMBRACING A FEW CASES
HEARD IN THE WINTER SESSION OF 1833
LIVINGSTON, APPELLANT, AND THE PERU IRON
COMPANY, AND OTHERS, RESPONDENTS

Reported 9 Wendell (N. Y.) 511.

Where, to a bill in chancery filed by a purchaser of land, alleging a previous conveyance of part of the same premises executed by his grantor to have been obtained by fraud, and that the grantee, under such fraudulent deed, had entered into possession and held and occupied the premises, praying a discovery, an account and general relief, the defendant demurred, relying upon his possession under his deed as rendering void the conveyance to the complainant; it was held, that the possession under the deed admitted by the demurrer to have been fraudulently obtained, could not be considered adverse so as to avoid the deed to the complainant, and the demurrer was overruled and the defendant decreed to answer.

A deed fraudulently obtained is not available as the foundation of an adverse possession, so as to avoid a subsequent conveyance; nor is a deed available for such purpose executed by a person assuming to act as the attorney of the grantor, but without authority, when such want of authority is known to the grantee.

To constitute a possession adverse so as to bar a recovery or to avoid a deed subsequently executed by the true owner, the party setting up the possession must, in making his entry upon the land, act bona fide; he must rely on his title; he must believe the land to be his, and that he has title thereto, although his title may not be rightful or valid; but if the title be an absolute nullity, as a deed obtained by fraud or forgery, it will not serve as the foundation of an adverse possession. (a)

[(a) Adverse possession cannot be founded on a void conveyance. Jackson v. Andrews, 7 Wend. 152; Jackson v.

Hill, 5 Wend. 532. 1 R. S. 739, § 147, 148. A. conveyed to B. by mistake a part instead of the whole of a farm; B. took possession of the whole and mortgaged it to C., who foreclosed and became the purchaser; A. with B's consent quitclaimed to C. Held valid notwithstanding B's possession. Cameron v. Irwin, 5 Hill, 272. The statute was intended for the benefit of adverse claimants and they may renounce the benefit of it. Ibid. It has no application to a devise. 2 Wend. 166. Not to judicial sales. 6 Wend. 213. 2 Barb. S. C. R. 156. 2 Barb. ch. 398. 2 Hill, 526. 3 Barb. S. C. R. 589. See Whiteside v. Jackson, 1 Wend. 418. 7 Wend. 53. Lane v. Shears. 1 Wend. 433. Jackson v. Burton, id. 341. The adverse possession required to bar an ejectment is defined by 2 R. S. 294, § 9-13.]

Appeal from chancery. The appellant, Anthony R. Livingston, filed his bill in chancery, in which, after [512] stating that in 1811, his father, John Livingston, made an arrangement with him, two of his brothers, and his only sister, to convey to them in fee simple, in severalty, parcels of his real estate for their respective portions of the same, and that in pursuance of such arrangement, and for the purpose of carrying the same into effect, his father, on the 1st January, 1820, in consideration of natural love and affection towards him, and of one dollar acknowledged to have been paid to him by the appellant, did grant and convey unto the appellant two lots of land in the county of Clinton, containing together about 9,000 acres, one of the lots being known as lot number one, and the other as lot number eight, of a tract in the bill described — alleged that one Z. Palmer, having discovered a valuable iron ore-bed on lot number eight, applied, in the month of May, 1819, to John Livingston, the father of the appellant, for the purchase of 164 acres of land, embracing the ore-bed, representing the same as of little value, and of no use except for a sheep pasture, for which purpose he alleged he wanted it; that his father wrote a letter to his agents, A. & G. Sperry, authorizing them to contract with Palmer for the sale of the 164 acres of land at two dollars per acre; that on the 17th May, 1819, the Messrs. Sperry, assuming to be authorized by the said John Livingston, and as his attornies, executed in his name a deed in fee with full covenants, conveying the 164 acres to one Curtis Murray, who is charged in the bill with having been a party to the fraud practiced by Palmer; that the Messrs. Sperry had no power of attorney or authority to execute such conveyance, other than the letter above mentioned; that immediately after the conveyance to Murray, he and Palmer commenced opening and digging the ore bed, and raised therefrom large quantities of very valuable iron ore; that Murray sold out various portions of the ore bed; that the respondents, who are now the owners of the same, have erected iron works in the vicinity, which are supplied with ore from the ore bed, which is stated to be worth $70,000, and the annual profits of which are alleged to be $10,000. The bill further [513] alleges, that the respondents purchased with full knowledge of the fraud committed by Palmer; that John Livingston, until his death in 1822, resided 200 miles from the ore bed, and during his lifetime never knew of its existence; that the appellant resides 200 miles from the ore bed, and that until 1825, he had no knowledge of its existence; and concluded by asking a discovery, an account, and general relief.

The defendants put in a general demurrer to the bill, and assigned as causes of demurrer specially, that at the time of the conveyance to the complainant, Murray, to whom the deed of the 164 acres was executed, was in possession of the premises under and by virtue of his deed; that the bill, instead of being filed by all the heirs at law of John Livingston, is filed by the complainant alone; and that such a case is not made out as entitles the complainant to discovery or relief. The cause was argued before the chancellor, who was of the opinion that the deed to Murray was fraudulently obtained and might be avoided, but that Murray and those claiming under him being in the actual possession of the premises at the time of the conveyance to the complainant, claiming to hold under the deed executed by the Sperrys, must be considered as holding adversely, and that consequently the legal title to the property could not pass to the complainant by the conveyance from his father. The chancellor therefore made a decree allowing the demurrer, but gave leave to the complainant, on payment of costs, to amend his bill by making all the heirs at law or devisees of John Livingston parties thereto. From this decree the complainant appealed.

The following opinions were delivered:

By Chief Justice Savage. The chancellor decided that the fraud in obtaining the deed was sufficient to avoid it, but that the complainant was not in a situation to take advantage of it, as his own deed was void, it being executed when Murray and Palmer were in possession, holding adversely. The latter point in the decision of the chancellor presents the only question now before the court.

I consider the principle too well settled, to admit at this day of an argument, that a deed executed by the true owner, while there is a person in possession of the premises, holding adversely, is void as against such possessor, although it is good as against the grantor and his heirs. Both these points are decided in the case of Jackson v. Dumont, 9 Johns. R. 55. The important inquiry in the case therefore is whether Murray and Palmer were, (within the rule of law,) holding adversely on the first of January, 1820, when John Livingston conveyed the premises to the appellant? The doctrine of adverse possession has been so much and so often discussed in our courts that it ought at this day to be well understood. To prevent a recovery by the true owner, there must be a possession in the defendant, adverse in its character, and must have continued for twenty years. To render a conveyance by the true owner void as to the person claiming by possession, there must also be a possession, and that possession must be adverse in it character, and it must exist at the time of the execution of such conveyance, but no particular length of possession is necessary to make it effectual for this purpose. **The acts which constitute a possession are different according to the evidence of claim. Where the person claiming to hold by possession has no written evidence of title, but claims by parol to be the owner, there must be an actual occupancy, a pedis possessio, a substantial enclosure by fence, sufficient for the protection of the crops. It must be marked by definite** [517] **boundaries. Brandt v. Ogden, 1 Johns. R. 158. A possession fence by felling and lapping trees is too loose and equivocal. "There must be a real and substantial enclosure, an actual occupancy, a pedis possessio which is definite, positive and notorious, to constitute an adverse possession, when that is the only defence, and is to countervail a legal title." Jackson v. Schoonmaker, 2 Johns. R. 234.** An adverse possession to avoid a deed must be made out clearly and positively, and not by inference. 8 Johns R. 220. 9 id. 167, 8. Actual occupancy under claim of title, whether by deed or not, is good to the extent of such occupancy. **But when a**

lot is claimed to be held adversely, and part of it only is improved, it must be under a paper title; and such paper title must describe the premises claimed, part of which is under actual occupancy. 1 Cowen, 285, 6. **Without the paper title the possession is limited by the pedis possessio.** It is immaterial whether the deed conveys a good title; reliance on possession after title shown in the plaintiff presupposes want of a legal title in the grantor; **but if no lands are described in it nothing can pass, the deed is a nullity, and lays no foundation for a claim beyond the actual occupancy. Id. It would be easy to multiply cases to the same effect, that an adverse possession without paper title is good only to the extent of actual enclosure, and no further.**

What acts are sufficient to constitute the character of the possession adverse? If a person enters upon land and cultivates it, and lives on it, and says he is the owner, that is sufficient to make his possession adverse. He claims to be the owner in opposition to all the world.**If he claims it, and gives as a reason why it belongs to him, that he has first taken possession, and no other person has produced a title for it, though he has nothing but possession, such possession is not adverse. Jackson v. Frost, 5 Cowen, 346.** So if the first occupant sell merely his possession, not assuming to convey the title, such conveyance cannot be the basis of an adverse possession, because it supposes a better title in some other person. The claim must be of the entire title. It is not necessary that the title set up should be a rightful title. **When the plaintiff has shown title, and the defendant relies on possession, the idea of right is excluded; the fact of possession and the quo animo it was commenced or continued are the only tests; and it must necessarily be exclusive of any other rights. 9 Johns. R. 180.** This doctrine has **been often repeated. Let me ask what is meant by the quo animo? Is it an intent to take possession of another man's land, knowing it to be so, and to make it his own by 20 years possession? That will not be pretended. Such an entry would be a mere trespass, and the person so trespassing, with no other pretence or color of title, will always be a trespasser. The animo then, or intent with which an entry is made, must be bona fide an entry believing in good faith that the land is his and that he has title.** To prove this proposition I refer to the opinions of the members of this court, delivered in the case of La Frambois v. Jackson, 8 Cowen, 595, et sequitur. That case has sometimes been considered as overturning some of the doctrines of the supreme court on the subject of adverse possession, and therefore I choose to take the law from it. Chancellor Jones, speaking of the possession of La Frambois, says: "The quo animo is apparent, from his uniform claim of title, and continued exercise of acts of ownership. His entire confidence in his title, and his reliance upon its sufficiency to protect his possession, and the assertion of his rights under it against the claims of the proprietors under the patent, are decisive of his own opinion and belief in the validity of his title." **According to Chancellor Jones, the defendant must have such a title as he relies on, and believes is a good one; whether it, in point of fact, is good or not, is not the test, but whether he believes it to be good. He must rely upon it, and it would seem must have some reasons for such reliance,** for the learned chancellor goes into an argument to show that he had good reason to rely in that case. The court below in that case had said that La Frambois' title was from a foreign government, and therefore presumed to be known to him as insufficient to constitute the basis of an adverse possession. The chancellor goes on to show that no such fact appeared in the special verdict; that the court below had mistaken the fact. Their law is not denied. The case of Jackson v. Waters, 12 Johns. R. 365, is commented on by the chancellor, and its correctness is not denied. In that case the fact did appear that La Frambois claimed under Mackay, who derived title under the French government. In the case of La Frambois v. Jackson, the claim was [519] for a different lot from that which was the subject of the suit in Jackson v. Waters, but it was supported by the same writing from Mackay. Whether the further fact appeared upon the case in the court below, from which the special verdict was framed, or whether the court below had actually mistaken the fact, from the circumstance that the same paper was produced as evidence in both cases, does not appear, nor is it material to enquire. **It is sufficient for my purpose that it is not denied that a deed from a foreign government cannot constitute a possession under it adverse. It had been so decided in Jackson v. Waters, and Chief Justice Thompson gives the reason, because such a grant is absolutely void, affords no legal evidence of title, and possession taken under it is unavailable for any purpose. Now it is possible that La Frambois might rely upon it, though it was a perfect nullity;** yet the court says that the title must be such as by possibility might convey a right, and he must have been presumed to know that his title was a nullity. This principle is not denied by Chancellor Jones. It is admitted by him, arguendo. He says: "Whatever the right of Mackay was, if La Frambois went into possession supposing it to emanate from a legitimate source, and in confidence that his contract entitled him to a conveyance, and that Mackay had the right to give the conveyance he promised, his possession would be adverse, notwithstanding his confidence was misplaced, and the title of Mackay, under whom he entered, was invalid." The chancellor proceeds to argue that Mackay supposed his claim was under the English government, which, before the revolution, would be good; and strenuously insists that it was not under the French government. **Colden, senator, recognizes the case of Jackson v. Waters as sound law, and assumes, that "when a possession is held under a claim of title which is not shown to be bad, and which might be good, it shall, after a sufficient lapse of time, bar every other title."** The doctrine in the case of Jackson v. Waters, is admitted by all except senators Viele and Stebbins, and all admit that the person entering under the title must rely upon that title. Senator Stebbins intimates that a French grant is as good as any title to support an adverse possession. The doctrine in Jackson v. Waters is distinctly this, that a possession taken under a grant from a foreign government is not such an adverse possession as will defeat the operation of a subsequent grant of the same land under our own government or the provincial government of New York. I have already remarked that this doctrine is not impugned by the case of La Frambois v. Jackson. In the latter case, the only point decided was that the person in possession under a written contract for more than twenty years, asserting title, was entitled to protection in his possession against a person showing the true legal title; that point had never been denied. Indeed the law of that very case as laid down by the court below was not denied. The judgment was reversed because the court below had assumed a fact which did not appear in the special verdict, to wit, that La Frambois claimed to hold under a foreign government. That fact did not appear in this court; all the discussion, therefore, about the validity of such a claim was out of the case. What was

said is entitled to great respect, on account of the learning and talents of those who discussed the subject; and the result of their opinions, I understand, with the exceptions above mentioned, to be, that such a source of title would not lay the foundation of an adverse possession.

SENATOR SPENCER QUOTES WITH APPROBATION WHAT WAS SAID BY WOODWORTH, JUSTICE, IN JACKSON v. WOODRUFF, 1 COWEN, 286, AS FOLLOWS: "IF THE TITLE IS BAD, IT IS OF NO MOMENT; BUT IF NO LANDS ARE DESCRIBED, NOTHING CAN PASS. THE DEED IS A NULLITY, AND CAN NEVER LAY THE FOUNDATION OF A GOOD ADVERSE POSSESSION, BEYOND THE ACTUAL IMPROVEMENT." Here is an express assertion that a deed which is a nullity can never lay the foundation of an adverse possession; that is precisely the principle of the case of Jackson v. Waters, and I consider it a sound principle which has several times been asserted by the supreme court, and has never been overruled by this court, and I trust never will be. In the arguments of the learned judges who delivered opinions in the case of La Frambois v. Jackson, much stress is laid upon the point, that every possession has, prima facie, the presumption of right in its favor, and authorities are cited to sustain it. THERE IS NO DOUBT THAT THE PRIN- [521] CIPLE IS CORRECT; BUT THE PRESUMPTION EXISTS ONLY UNTIL THE TRUE TITLE IS SHOWN; WHEN THAT IS DONE, THE LAW PRESUMES THE POSSESSION TO BE IN SUBSERVIENCE TO THE TRUE TITLE. Whenever, therefore, an action is brought to recover possession of land, the presumption in the first place is in favor of the defendant's possession. The plaintiff must show title; when he has done so, the presumption of law, which before was in favor of the defendant, now changes sides and is in favor of the plaintiff, because he has shown in himself title, and the law attaches the possession to the title. At first, title was presumed to be with the possession; when title is shown to be elsewhere, then the presumption is, that that possession was taken in subordination to the title. The defendant must after that show the adverse character of his possession; if he cannot show a title in himself, then it must be shown affirmatively and positively, and the burden of the proof is thrown upon the defendant. I have adverted to these cases on the doctrine of adverse possession, with the view of ascertaining whether the case now under consideration falls within either of the classes of cases in which possession has been adjudged to be adverse. The facts charged in the bill are, that immediately after the deed executed by the Sperrys, Murray and Palmer commenced opening and digging the ore-bed, and raised therefrom large quantities of very valuable iron ore. Was this an adverse possession within any of the acknowledged principles on that subject? There was no improvement, no clearing, no fence of any description, no building erected, no actual occupancy; all the acts of ownership were digging ore. THERE WAS THEREFORE NOTHING LIKE AN ADVERSE POSSESSION, INDEPENDENT OF THE DEED EXECUTED BY THE SPERRYS; AND FROM THE PRINCIPLES ABOVE REFERRED TO, AND WELL SETTLED, IF THAT DEED WAS A NULLITY, THERE WAS NO ADVERSE POSSESSION—CERTAINLY NONE BEYOND THE SPOT WHERE THE ORE WAS DUG. AND IF WITHOUT THE DEED THERE WAS NO ADVERSE POSSESSION, AND IF THE DEED BE A NULLITY, IT IS NO MORE THAN BLANK PAPER; it would follow that there has been in contemplation of the law no possession to avoid the deed from John Livingston to the appellant.

The bill charges that by frauudlent representations, Palmer obtained a letter from J. Livingston to the Sperrys, directing them to contract with him; and that the Sperrys without any letter of attorney or authority whatever, other than the letter brought to them by Palmer, executed a deed under seal, with full covenants, not to Palmer but to Murray. The letter was a special authority, and must be strictly pursued; it authorized a contract with Palmer but not with any other person; much less did it authorize a deed under seal. A deed under seal cannot be executed by attorney without an authority under seal. The deed executed by the Sperrys, professing to act as the attornies of J. Livingston, was not obligatory upon him; as to him, I apprehend, it was void. It is said that a deed which is voidable only, must be avoided by special pleading; but when it is absolutely void, the plea is non est factum. If John Livingston were living, and an action were brought upon the deed in question, it would certainly be sufficient to plead the general issue; and upon the trial it must be shown that the person professing to act as attorney, had authority by deed. According to the facts in this case, as charged in the bill and admitted by the demurrer, no such authority could be shown; of course, the deed is not the deed of John Livingston. The entry of Murray and Palmer was therefore without a deed; they are in no better situation as to adverse possession than if they had no deed, and in that case, I have endeavored to show that the possession could not be adverse. It is true, that to sustain an adverse possession, it is not necessary that a deed should be a valid deed, but it must be such an one as might be valid, and which the grantee relies on. The grantee in this case being privy to the manner in which this deed was obtained without authority, knew, for he was bound to know, as ignorance excuses no man, that the deed was inoperative and void. But the defendants, Murray and Palmer, not only knew that the deed was without authority, but they also knew that the authority which was given to contract the lot to Palmer was also void, as having been obtained by fraud. The letter in terms authorized a contract with Palmer; and instead of this an absolute deed is given to Murray, not even pursuing the authority of the letter. IT SEEMS TO ME, THEREFORE, THAT THE DEED WAS A NULLITY, AND THAT THE DEFEND- ANTS, MURRAY AND PALMER, KNEW IT TO [523] BE SO. IT WAS THEREFORE NO FOUNDATION FOR AN ADVERSE POSSESSION. IT DID NOT DIVEST THE NOMINAL GRANTOR OF ANY INTEREST WHATEVER, IT VESTED NO ESTATE IN THE NOMINAL GRANTEE; HE WAS A TRESPASSER. The case of Bradstreet v. Huntington, has been cited to prove that an adverse possession may commence under a void deed, or one obtained by fraud. At common law, a feoffment could not be made without livery of seisin, or a delivery of the possession; and where the owner was disseised of the possession, he could not convey to a third person, because he could not deliver possession, that being held by the disseisor; and yet it is settled law that such a deed is good between the parties to it; it is good as against the grantor and his heirs, it conveys all the interest of the grantor to the grantee, but the grantee cannot enforce it in his own name against the disseisor, though it may be done in the name of the grantor. It has been supposed in the above case that an adverse possession should more properly have been called an ouster or disseisin. Though they are sometimes synonymous,

they are not always so. **A disseisin, it is said, may commence by force or fraud; an adverse possession may commence by force, but, I apprehend, not by fraud, as for instance, under a deed obtained by fraud or by forgery. The person guilty of the fraud or forgery cannot rely upon such a deed as conveying a valid title;** and the arguments which have gone the greatest length in favor of adverse possession, have proceeded on the ground that the possessor relied on his title, and believed the property which he possessed to be his own. **A MAN MAY THINK HIMSELF THE TRUE OWNER OF PROPERTY IN THE POSSESSION OF ANOTHER, AND MAY TAKE FORCIBLE POSSESSION UNDER CLAIM OF TITLE; THAT IS AN ADVERSE POSSESSION; BUT IF, WITH A FULL KNOWLEDGE THAT SUCH PROPERTY BELONGS TO ANOTHER, A PERSON PROCURES A FORGED DEED, AND ENTERS UNDER THAT, WHAT IS THE QUO ANIMO? IS IT AN INTENT TO ENJOY HIS OWN, OR TO DEFRAUD ANOTHER?** And it has been often said and decided that the fact of possession and the quo animo the possession was taken, are the only tests. **If the quo animo is a bona fide intention to enjoy his own property, that intent can never exist where the possessor knows the property is not his own. If the quo animo is meant an intention to appropriate the property to his own use, right or wrong, then indeed is the possession of almost all intruders adverse.**

My conclusion is, that the entry of Murray and Palmer in 1819 was not such an adverse possession as avoids a deed executed by the owner to a third person. It may be said that if the deed is void, then the remedy at law is complete, and a resort to a court of equity unnecessary. It is a sufficient answer here that the point was not raised nor discussed in the court below, and the bill seeks a discovery, If the complainant is entitled to relief, he is also entitled to the discovery. The deed to Murray is void, so as not to lay the foundation of an adverse possession, assuming as facts positions which are to be established by the oath of the defendants, and possibly in no other manner. I am of opinion that the decree of the court below be reversed, that the demurrer be overruled, and that the defendants be required to answer the bill.

JUSTICES SUTHERLAND AND NELSON CONCURRED IN THE OPINION DELIVERED BY THE CHIEF JUSTICE.

BY MR. SENATOR ALLEN. It appears to be admitted by the appellant, in his bill of complaint, that Murray and Palmer not only contracted with the agents of John Livingston for the land in question, but that they obtained a conveyance in fee of the same, executed by the said agents in the name and on behalf of their principal, with full covenants; also, that they went into possession of the premises, and commenced working the ore bed, and for aught that appears in the case, are still in possession by themselves or by those who hold under them. The bill charges, however, that Palmer having discovered a valuable bed of iron ore on the land, falsely represented it to be of little value, and of no use except for a sheep pasture, for which purpose he wanted it, and fraudulently concealed the existence of the iron ore bed. There being no answer to this bill, we are to consider the averments as true, or at least admitted by the respondents to be so; and were the case now to be decided on its merits solely, with no further evidence than what appears from the bill, my opinion might be different from what it is. There certainly was a gross misrepresentation by Palmer as to the value of this land, and the purposes to which it was to be applied. On the other [525] hand, however, it would seem proper that the agents of Livingston ought to have known the properties and value of the land, with the sale of which they were entrusted, and to have informed him accordingly. In all large tracts of land, there naturally will be a considerable diversity of soil and situation, and consequently a corresponding difference in value. If agents, therefore, know nothing of the situation of land generally, the sale of which is entrusted to them, they must be liable to much imposition from interested purchasers; and if they do know, and omit to inform their principal, in cases like the present, the injury resulting ought not to be chargeable to the purchaser. There can be no law, as I apprehend, that would compel a purchaser to communicate to the vendor the knowledge he may have obtained by a personal examination or otherwise of the premises he was about purchasing, especially if such communication would be the means of enhancing the price. Every man having property to dispose of, is bound to know its value; and if ignorant of it, it is his misfortune, and he ought to abide the consequence; at the same time, no man is authorized to deceive another by false representations, in order to obtain a thing for much less than its real value, and thus appropriate to himself the property of another by a fraudulent representation of its uses and value. If the facts however are as they appear to be admitted, that Murray and Palmer were put into possession of the land under a conveyance in fee with full covenants by the agents of John Livingston, and were in possession at the time that he executed the deed to the appellant, is not such possession adverse?

The deed under which the appellant claims was dated on the 1st of January, 1820, about eight months after the sale to Murray and Palmer, and no attempt has been made, by any thing which appears in the case, to dispute their title until the filing of the present bill, which took place on the 18th of October, 1829, nearly ten years after the date of the deed to the appellant. **The principle has been well established by numerous cases, that the conveyance of land by a person out of possession, such land being held adversely by another, annuls the deed;** and the person receiving such conveyance cannot maintain an action upon it, or obtain the right to enter on the possession of such land. **No transfer of real estate can be good, if the grantor has not the ability to deliver the possession of it, as possession has ever been necessary, in order to acquire and ascertain the property in land; and without it, a man cannot be considered the complete owner, so as to transmit the inheritance to his heirs.** 5 Johns. R. 489. 9 id. 55. 3 Johns. Cas. 101. 2 Caines, 183. 2 Black. Comm. 312. The eighth section of the act of the legislature to prevent champerty prohibits the buying or selling of pretended titles to land by any person, unless he, or those by whom he claims, shall have been in possession of such land, or have received the rents and profits of the same for the space of one whole year next before such sale or conveyance, under the pain of forfeiting the whole value of such land, both by the buyer and seller. 1 R. L. 173. The policy of this law is salutary, and is intended to guard the public from imposition, by having pretended titles to land palmed upon them as genuine, and to prevent unprincipled speculators from preying upon the credulity of the unsuspecting portion of the community, by selling that which has no existence other than the description of the thing set

forth in the fraudulent conveyance of the vendor. By this act a heavy penalty is recoverable both from the buyer and seller of pretended titles; but if a person conveys land without knowledge of an adverse possession at the time of such conveyance, he shall not be liable to the penalty, though in all cases it is to be presumed in the first instance that the seller of land knows the situation of it. 1 Wendell, 437. The conveyance under which the appellant claims, therefore, must be considered within the penal provisions of the act of the legislature, unless it can be shown that neither the grantor or grantee knew of the existence of the title held by the respondents, and under which they were in possession of the land. Whether they had any knowledge of this adverse possession or not, does not appear; but of this there can be no doubt that instead of the grantor having been in possession of the land in question, or of his taking the rents and profits thereof, for the space of one whole year next before the execution of the deed to the appellant, as specified in the statute, he was out of possession [527] for nearly eight months previous to that transaction. The facts in the case, therefore, are in direct opposition to the provisions of the statute.

It was insisted by the counsel for the appellant, that inasmuch as the title of the respondents was obtained by misrepresentation and fraud, it is void, and therefore that the possession of the premises under this fraudulent title could not be adverse to a conveyance by the defrauded grantor. It has been decided, however, and the decision is in accordance with the provisions of the statute, that it is not necessary, in order to constitute an adverse possession, that it should be held under a good or rightful title. The fact of possession, and that is was commenced and continued, are the only tests, and it must be exclusive of all other rights. 18 Johns. R. 40. 9 id. 180. It seems, therefore, that by the provisions of the common law, and in accordance with those of the statute, no conveyance of real estate can be valid and effectual while such estate is held by a third person adversely.

....**The property in question being part of a large tract of land, containing between eight and nine thousand acres, was conveyed to the appellant by his father, John Livingston, on the 1st day of January, 1820.** This grant was not properly a sale of the land, although in law it may be so considered, but a gift in consideration of natural love and affection, and was consummated in conformity with an arrangement previously contemplated for the division of the estate of the grantor among his children. Now as it is alleged that the adverse possession of the respondent is under a title from John Livingston by his attorneys or agents, and the claim of the appellant to the land thus held is by a conveyance executed by John Livingston also and as the land cannot pass by the last conveyance unless the former shall be avoided, the question now is, was the bill properly filed, or can a suit be sustained by Anthony R. Livingston alone, without joining the other heirs at law of John Livingston? The law as laid down, 2 Coke, 83, is, that an estate made by fraud must be avoided only by him who had a former right, title, interest, debt or demand. A sale in open market by fraud shall not bar a right which is more ancient, and a fraudulent gift shall not defeat an execution [528] in respect to a former debt. In accordance with this authority, no person, except him who held title to an estate before the fraud was perpretrated, can avoid a fraudulent deed for such estate. As the deed to Anthony R. Livingston, therefore, was void by the adverse possession of the respondents, no title passed to him by the conveyance; and as he possessed no title to the one hundred and sixty-four acres of land in question, it remains a part of the estate of which his father died seized, and consequently belongs to his heirs at law. If this position is correct, it follows that the heirs at law of John Livingston must be made parties to any suit which may be brought on this subject. It appears to me, however, that the bill ought to be dismissed, and the parties left to their remedies at law; for I hold it a sound rule that where relief can be obtained in a court of law, parties ought not to be encouraged to come into a court of equity. I will vote however for an affirmance of the decree of the chancellor, if that be deemed by the court the most advisable course.

On the question being put, Shall this decree be reversed? the members of the court voted as follows:

In the affirmative—THE CHIEF JUSTICE, JUSTICE SUTHERLAND, JUSTICE NELSON AND SENATORS BIRDSALL, CROPSEY, LANSING, McDONALD, MATHER, McLEAN AND TALLMADGE—10.

In the negative—SENATORS ALLEN, CONKLIN, DEITZ, DODGE, GERE, HUBBARD, LYNDE, SEWARD—8.

Whereupon the decree of the chancellor was reversed.

As to Foreign Grants:

Limitations and Adverse Possession By Buswell

Section 262:

Does not arise under void foreign grants — Semble —

It is held that the ineffectual grant of a foreign government does not confer such title as to render the possession held under it adverse. Thus in New York, the court held, that it "could not take notice of any title to land not derived from our own government and verified by a patent under the great seal of the state or province of New York," and therefore, refused to recognize claims to lands within the state under grants made by the French government in Canada, prior to the treaty between Great Britain and France in 1763, — such claims being regarded as furnishing, at best, foundations for equitable titles, and as affording no evidence of legal title that could be recognized by a court of law. Again, where it was attempted to set up an adverse possession under a title derived from one whose own title was derived from a French grant, the court recognized the principle that a title not derived from our own government could not be noticed, and that grants from the French government were to be treated as nullities, and, therefore, as affording no legal evidence of title which the court could recognize, and, therefore, that possession taken under them could not be deemed as taken in hostility to any private or individual right.

An enclosure on three sides by a wrong doer is insufficient as against the real owner.

Armstrong vs. Risteau, 5 Md. 256.

Where a defendant in an action of ejectment was in possession of an hundred acres by enclosure, and cultivation for fifteen years, and enlarged his enclosure so as to include one hundred and fifty acres, and he possessed the same so enlarged for six years thereafter claiming the same as

l Survey. Anno Domini. MDCCLV.

rporation of Trinity Church.

By F. Maerschalck,
City Surveyor.

REFE

A. The Fort
B. Trinity Church
C. Old Dutch Church
D French Church
E. New Dutch Church
F. Presbyterian Meeting
G. Quakers Do
H. Baptist Do
J. Lutheran Church
K. Jews Synagogue
L. St George's Chapel
M. Moravian Meeting
N. New Lutheran Meeting
1. Governors House
2. Secretarys Office
3. Custom House
4. Peter Livingston & Co Supp
5. City Hall
6. Byard's Sugar House
7. Exchange
8. Fish Market
9. Old Slip Market

To the Honorable
ES DE LANCEY Esq
tenant Governor and
der in Chief in and over
Providence of NEW-YORK
ities Depending thereon
In America
Plan of the City of NEW-YORK
Humbly Dedic.d By
ur Honours Most Obed.t
Humble Servent
Gr Duyckink

Ed.d Holland Esq.
MAYOR.

Rutgers Street
Jacob Street
Henrietta Street
Hester Street
Wynne Street
Stanton Street
Rivington Street
Delancey Street
Elizeth Street
Division Street
Grand Street
Hester Street
Broome Street
Ludlow Street
Eldridge Street
Allen Street
Pitt Street
Norfolk Street
Suffolk Street
Clinton Street
Attorney Street
Ridge Street
Bowery Lane
Mott Street
Bayard Street
Grand Street
Hester Street
Division Street
Grand Street
Broome Street
Delancey Street
Rivington Street
Stanton Street
Houston Street
Bleecker Street
Bond Street
Great Jones Street
Washington Street
Lafayette Street
Mercer Street
Greene Street
Wooster Street
Sullivan Street
Thompson Street
Laurens Street
Varick Street
Hudson Street
Greenwich Street
Washington Street
Fulton Street
Ann Street
Liberty Street
Cedar Street
Pine Street
Maiden Lane
Wall Street
Beekman Street
Ann Street
Fulton Street
Dey Street
Cortlandt Street
Barclay Street
Vesey Street
Murray Street
Chambers Street
Reade Street
Warren Street
Chapel Street
Leonard Street
Worth Street
Franklin Street
Walker Street
Canal Street
Grand Street
Broome Street
Delancey Street
Rivington Street
Stanton Street
Houston Street
Bleecker Street
Bond Street
Great Jones Street
Washington Square

forth in the fraudulent conveyance of the vendor. By this act a heavy penalty is recoverable both from the buyer and seller of pretended titles; but if a person conveys land without knowledge of an adverse possession at the time of such conveyance, he shall not be liable to the penalty, though in all cases it is to be presumed in the first instance that the seller of land knows the situation of it. 1 Wendell, 437. The conveyance under which the appellant claims, therefore, must be considered within the penal provisions of the act of the legislature, unless it can be shown that neither the grantor or grantee knew of the existence of the title held by the respondents, and under which they were in possession of the land. Whether they had any knowledge of this adverse possession or not, does not appear; but of this there can be no doubt that instead of the grantor having been in possession of the land in question, or of his taking the rents and profits thereof, for the space of one whole year next before the execution of the deed to the appellant, as specified in the statute, he was out of possession [527] for nearly eight months previous to that transaction. The facts in the case, therefore, are in direct opposition to the provisions of the statute.

It was insisted by the counsel for the appellant, that inasmuch as the title of the respondents was obtained by misrepresentation and fraud, it is void, and therefore that the possession of the premises under this fraudulent title could not be adverse to a conveyance by the defrauded grantor. It has been decided, however, and the decision is in accordance with the provisions of the statute, that it is not necessary, in order to constitute an adverse possession, that it should be held under a good or rightful title. The fact of possession, and that is was commenced and continued, are the only tests, and it must be exclusive of all other rights. 18 Johns. R. 40. 9 id. 180. It seems, therefore, that by the provisions of the common law, and in accordance with those of the statute, no conveyance of real estate can be valid and effectual while such estate is held by a third person adversely.

....**The property in question being part of a large tract of land, containing between eight and nine thousand acres, was conveyed to the appellant by his father, John Livingston, on the 1st day of January, 1820.** This grant was not propperly a sale of the land, although in law it may be so considered, but a gift in consideration of natural love and affection, and was consummated in conformity with an arrangement previously contemplated for the division of the estate of the grantor among his children. Now as it is alleged that the adverse possession of the respondent is under a title from John Livingston by his attorneys or agents, and the claim of the appellant to the land thus held is by a conveyance executed by John Livingston also and as the land cannot pass by the last conveyance unless the former shall be avoided, the question now is, was the bill properly filed, or can a suit be sustained by Anthony R. Livingston alone, without joining the other heirs at law of John Livingston? The law as laid down, 2 Coke, 83, is, that an estate made by fraud must be avoided only by him who had a former right, title, interest, debt or demand. A sale in open market by fraud shall not bar a right which is more ancient, and a fraudulent gift shall not defeat an execution [528] in respect to a former debt. In accordance with this authority, no person, except him who held title to an estate before the fraud was perpretrated, can avoid a fraudulent deed for such estate. As the deed to Anthony R. Livingston, therefore, was void by the adverse possession of the respondents, no title passed to him by the conveyance; and as he possessed no title to the one hundred and sixty-four acres of land in question, it remains a part of the estate of which his father died seized, and consequently belongs to his heirs at law. If this position is correct, it follows that the heirs at law of John Livingston must be made parties to any suit which may be brought on this subject. It appears to me, however, that the bill ought to be dismissed, and the parties left to their remedies at law; for I hold it a sound rule that where relief can be obtained in a court of law, parties ought not to be encouraged to come into a court of equity. I will vote however for an affirmance of the decree of the chancellor, if that be deemed by the court the most advisable course.

On the question being put, Shall this decree be reversed? the members of the court voted as follows:

In the affirmative—THE CHIEF JUSTICE, JUSTICE SUTHERLAND, JUSTICE NELSON AND SENATORS BIRDSALL, CROPSEY, LANSING, McDONALD, MATHER, McLEAN AND TALLMADGE—10.

In the negative—SENATORS ALLEN, CONKLIN, DEITZ, DODGE, GERE, HUBBARD, LYNDE, SEWARD—8.

Whereupon the decree of the chancellor was reversed.

As to Foreign Grants:

Limitations and Adverse Possession By Buswell

Section 262:

Does not arise under void foreign grants — Semble —

It is held that the ineffectual grant of a foreign government does not confer such title as to render the possession held under it adverse. Thus in New York, the court held, that it "could not take notice of any title to land not derived from our own government and verified by a patent under the great seal of the state or province of New York," and therefore, refused to recognize claims to lands within the state under grants made by the French government in Canada, prior to the treaty between Great Britain and France in 1763, — such claims being regarded as furnishing, at best, foundations for equitable titles, and as affording no evidence of legal title that could be recognized by a court of law. Again, where it was attempted to set up an adverse possession under a title derived from one whose own title was derived from a French grant, the court recognized the principle that a title not derived from our own government could not be noticed, and that grants from the French government were to be treated as nullities, and, therefore, as affording no legal evidence of title which the court could recognize, and, therefore, that possession taken under them could not be deemed as taken in hostility to any private or individual right.

An enclosure on three sides by a wrong doer is insufficient as against the real owner.

Armstrong vs. Risteau, 5 Md. 256.

Where a defendant in an action of ejectment was in possession of an hundred acres by enclosure, and cultivation for fifteen years, and enlarged his enclosure so as to include one hundred and fifty acres, and he possessed the same so enlarged for six years thereafter claiming the same as

Plan of the City of NEW-YORK from an actual Survey. Anno Domini. MDCCLV.

Copy of an original Map in the possession of the Corporation of Trinity Church.

By F. Maerschalck,
City Surveyor.

Scale 1320 to 1/4 of a Mile.

REFERENCE.

A. The Fort	10. Meal Market
B. Trinity Church	11. Fly D°
C. Old Dutch Church	12. Burtins D°
D French Church	13. Oswego D°
E. New Dutch Church	14. English Free School
F Presbyterian Meeting	15. Dutch D° D°
G. Quakers D°	16. Pel^son Courtlands Sugar House
H. Baptist D°	17. Joseph Griswold Des
J. Lutheran Church	18. Still House
K. Jews Synagogue	19. Wileys Livingstone
L. St George's Chapel	20. & Lafferts In. Com^l D°
M. Moravian Meeting	21. Thos Vatar Distilhouse
N. New Lutheran Meeting	22 Robert Griffith D°
1. Governors House	23. Jno Burling D°
2. Secretarys Office	24. James Burling D°
3. Custom House	25. Jno Leake D°
4. Peter Livingston & Co Sup^g H^se	26. Benjn Blagge D°
5. City Hall	27. Jews Burial Ground
6. Byard's Sugar House	28. Poor House
7. Exchange	29. Powder D°
8. Fish Market	30. Block D°
9. Old Slip Market	31. Gates

To the Honorable
JAMES DE LANCEY Esq
Lieutenant Governor and
Commander in Chief in and over
The Providence of NEW-YORK
and Territories Depending thereon
In America
This Plan of the City of NEW-YORK
Is Humbly Dedic^d By
Your Honours Most O^bed^t
Humble Servent
G^o Duyckink

ED^W HOLLAND Esq.
MAYOR.

his own, it was held that he had title by his adverse possession of one hundred acres only.

Hull vs. Gittings, 2 H. & Johns. (Md.) 391.

Goeway vs. Wrig, 8 Ill. 238.

HOPKIRK VS. BELL, 3 CRANCH, 454.

* * * * * * * * * *

"Whether the act of assembly of Virginia for the limitations of actions pleaded by the defendant was, under all the circumstances stated, a bar to the plaintiff's demand, founded on a promissory note, given on the 21st day of August, 1773?"

* * * * * * * * * *

That the said Alexander Spiers, John Bowman and Co. were at that time British subjects, merchants, residents in Glasgow, in the Kingdom of Great Britain, and have never been resident within the limits of the then colony, now state of Virginia, and that James Hopkirk, the surviving partner, now is, and always has been, from the time of his birth, a British subject, resident in the Kingsdon of Great Britain, and was never within the limits of the commonwealth of Virginia. That the company had a factor or factors resident in the commonwealth of Virginia on the 21st of August 1773, when the note was given, and from that time to the commencement of the American War, viz., on or about the 1st of September, 1776. That the company had neither agent or factor in this country, authorized to collect their debts, from the commencement of the war in 1776, until the year 1784. That on or about the 10th of September, 1784, and ever since, an agent has resided in this commonwealth, authorized by power of attorney, generally, to collect all debts due to the company in this commonweath.

* * * * * * * * * *

The idea of limitations can defeat the remedy only. The debt remains. But if the bar has been complete yet it was forever removed by the treaty.

This was a bona fide debt, contracted before the treaty, and the act of limitations is a legal impediment which it is endeavored to oppose to its recovery. But the treaty says that the creditor shall meet with no legal impediment; and the Constitution of the United States declares the treaty to be the supreme law of the land. The act of limitations therefore must yield to the treaty.

In the case of Ware v. Hylton, 3 Dall. 199, this court, upon very solemn argument, decided that the treaty not only repealed all the state laws which operated as impediments, but nulified all acts done, and all rights acquired, under such laws which tended to obstruct the creditors right of recovery.

Similar adjudications were also made in the case of Hamilton v. Eaton, in 1796, by Ch. J. Ellsworth and Judge Sitgreaves in North Carolina. Page v. Pendleton, in 1793, by Chancellor Wythe, Wythe's reports, 127, and by this court in the State of Georgia v. Brailsford, 3 Dall. 1.

* * * * * * * * * *

March 4. The court ordered the following opinion to be certified to the Circuit Court.

Upon the question, in this case, referred to this court, from the circuit court, it is considered by this court that the said Act of Limitations is not a bar to the plaintiff's demand on the said note; and this court is of opinion, that the length of time from the giving the note to the commencement of the War, in 1775, not being sufficient to bar the demand on the said note, according to the said Act of Assembly, the treaty or peace between Great Britain and the United States of 1783, does not admit of adding the time previous to the war to any time subsequent to the treaty in order to make a bar; and is also of opinion that the agent merely for collecting debts mentioned and described in the said state of facts, is not to be considered as a factor within the meaning of the said Act of Assembly so as to bring the case within the proviso of said act.

By this the court is not to be understood as giving an opinion on the construction of the note, as to the time of payment.

JACKSON VS. CAMP, 1 COWAN, PAGE 605:

The actual occupancy for more than 20 years, is sufficient, thus far, to defeat the plaintiff's recovery. Between this improvement and the line from B to C., (the true division line between lots 54 and 63) there remains a small parcel of land not improved, of which the defendant claims to be in possession; to a part of this he does not make out a good adverse possession because not included within the bounds of his deed. An entry under claim of title, is generally sufficient, and it is not material whether the title prove to be valid or not. If the claim of title is not founded on a deed or writing, the possession is limited by actual occupancy, and substantial enclosure, definite and notorious, according to the doctrine laid down in Jackson v. Schoonmaker (2 Johns 230). If the claim is under a writing, as in this case, possession and improvement of part of a lot will give a valid constructive possession of the residue, although not improved; but it is essential to support such constructive possession, that the writing relied on as the evidence of title, should include within its boundaries, the land not occupied and improved. If it does not, it would be absurd and unjust to allow a tenant to hold adversely, land on which, by his own showing he is merely a naked possessor. The court has so decided in Jackson ex dem Gilliland v. Doty & Woodruff (a) at the last August term. The same principle was decided previously, and referred to in the last case. Dyer's contract does not include this parcel lying in 54; there could not be any claim of title under it to that extent.

Will you believe that Trinity's grant with no northern or southern boundary was a nullity? Do these cases convince you that this grant, with no northern or southern description, could not support a claim of adverse possession?

But as to the merits, after reading the foregoing record published by the Common Council of the City of New York, will you believe Trinity Church was at that period claiming outside of the palisades? Or could prove actual physical possession of this property?* See maps of church property.

Revolution.

Brief reference has been made to the effect of War at stated periods during the long continued controversy between the Bogardus and Trinity Church, with respect to the Bogardus Farm.

Before proceeding to a consideration of Trinity's claims, respecting leases of divers pieces and parcels of this tract, it is all important to consider just what was the effect of the revolution. Had any vested rights matured under the British law at the time the Revolution repealed, annulled and obliterated the legal foundation for any claim during that period. We can understand, of course, that the tory

element was overwhelming in the church, but it is also a fact that there were many good federalists. In the list of forfeited estates there are many names of men closely associated with Trinity, and it has been stated that the Council of Safety took possession of Trinity property and held it for years during the revolutionary period.

No more satisfying presentation on the attitude of the courts and of the States, upon this question of war, could be given than to present these acts and the exact language of the court in the various cases where this question was at issue:

LAWS OF THE STATE OF NEW-YORK.

Passed in the Third Session of the Legislature, held at Kingston, in Ulster County.

CHAP. XXV.

AN ACT FOR THE FORFEITURE AND SALE OF THE ESTATES OF PERSONS WHO HAVE ADHERED TO THE ENEMIES OF THIS STATE, AND FOR DECLARING THE SOVEREIGNTY OF THE PEOPLE OF THIS STATE, IN RESPECT TO ALL PROPERTY WITHIN THE SAME.

Passed 22d October, 1779.

Whereas during the present unjust and cruel war, waged by the king of Great-Britain, against this state, and the other United States of America, divers persons holding or claiming property within this state, have voluntarily, been adherent to the said king, his fleets and armies, enemies to this state, and the said other United States, with intent to subvert the government and liberties of this state, and the said other United States, and to bring the same in subjection to the crown of Great-Britain; by reason whereof, the said persons have severally justly forfeited all right to the protection of this state, and to the benefit of the laws under which such property is held or claimed: And whereas the public justice and safety of this state absolutely require, that the most notorious offenders should be immediately hereby convicted and attainted of the offence aforesaid, in order to work a forfeiture of their respective estates, and vest the same in the people of this state: And whereas the constitution of this state, hath auhorized the legislature to pass acts of attainder for crimes committed before the termination of the present war:

I. Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That John Murray, earl of Dunmore, formerly governor of the colony of New-York; William Tryon, Esq. late governor of the said colony; John Watts, Oliver De Lancey, Hugh Wallace, Henry White, John Harris Cruger, William Axtell, and Roger Morris, Esquires, late members of the council of the said colony; George Duncan Ludlow, and Thomas Jones, late justices of the supreme court of the said colony; John Tabor Kempe, late attorney-general of the said colony; William Bayard, Robert Bayard, and James De Lancey, now or late of the city of New-York, Esquires; David Matthews, late mayor of the said city; James Jauncey, George Folliot, Thomas White, William M'Adam, Isaac Low, Miles Sherbrook, Alexander Wallace, and John Wetherhead, now or late of the said city, merchants; Charles Inglis, of the said city, clerk, and Margaret his wife; Sir John Johnson, late of the county of Tryon, knight and baronet; Guy Johnson, Daniel Claus, and John Butler, now or late of the said county, Esquires; and John Joest Herkemer, now or late of the said county, yeoman; Frederick Philipse, and James De Lancey, now or late of the county of Westchester, Esquires; Frederick Philipse (son of Frederick) now or late of the said county, gentleman; David Colden, Daniel Kissam, the elder, and Gabriel Ludlow, now or late of Queen's county, Esquires; Philip Skeene, now or late of the county of Charlotte, Esq. and Andrew P. Skeene, son of the said Philip Skeene, late of Charlotte county; Benjamin Seaman, and Christopher Billop, now or late of the county of Richmond, Esquires; Beverly Robinson, Beverly Robinson the younger, and Malcom Morrison, now or late of the county of Dutchess, Esquires; John Kane, now or late of the said county, gentleman; Abraham C. Cuyler, now or late of the county of Albany, Esq. Robert Leake, Edward Jessup, and Ebenezer Jessup, now or late of the said county, gentlemen; and Peter Du Bois and Thomas H. Barclay, now or late of the county of Ulster, Esquires; Susannah Robinson, wife to the said Beverly Robinson, and Mary Morris, wife to the said Roger Morris; John Rapalje, of King's county, Esq. George Muirson, Richard Floyd, and Parker Wickkam, of Suffolk county, Esquires; Henry Lloyd, the elder, late of the state of Massachusetts-Bay, merchant; and sir Henry Clinton, knight, be, and each of them are hereby severally declared to be, Ipso Facto, convicted and attainted of the offence aforesaid; and that all and singular the estate, both real and personal, held or claimed by them the said persons severally and respectively, whether in possession, reversion or remainder, within this state, on the day of the passing of this act, shall be, and hereby is declared to be forfeited to, and vested in the people of this state.

II. And be it further enacted by the authority aforesaid, That the said several persons herein before particularly named, shall be, and hereby are declared to be forever banished from this state; and each and every of them, who shall at any time hereafter be found in any part of this state, shall be, and are hereby adjudged and declared guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

* * * * * * * * * *

XIII. And be it further enacted by the authority aforesaid, That all titles, estates, and interests, by executory devise or contingent remainder, claimed by any person hereby, or by virtue of this law to be convicted; shall on conviction be as fully forfeited to all intents, constructions and purposes, in the law whatsoever, to the people of this state, as any other titles; claims, estates, or interests whatsoever.

XIV. And be it further enacted by the authority aforesaid, That the absolute property of all messuages, lands, tenements and hereditaments, and all rents, royalties, franchises, prerogative, privileges, escheats, forfeitures, debts, dues, duties and services, by whatsoever names respectively, the same are called and known in the law; and all right and title to the same, which next and immediately before the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-six, did vest in, or belong, or was, or were due to the crown of Great-Britain, be, and the same, and each and every of them, hereby are declared to be, and ever since the said ninth day of July in the year of our Lord one thousand seven hundred and seventy-six, to have been, and forever hereafter shall be vested in the people of this state, in whom the sovereignty and seignory thereof are and were united and vested, on and from the said ninth day of July, in the year of our Lord one thousand seven hundred and seventy-six.

XV. And be it further enacted, by the authority aforesaid, That the person administring the government of this state for the time being, shall be, and he is hereby author-

ized and required, by and with the advice and consent of the council of appointment, to appoint, during the pleasure of the said council and commission, under the great seal of this state, three commissioners of forfeitures, for each of the great districts of this state: That the said commissioners, or a majority of them, shall be and hereby are authorized and required, from time to time, to sell and dispose of all real estates within their respective districts, forfeited or to be forfeited to the people of this state, at public vendue, to the highest bidder or bidders, and in such parcels as they shall from time to time think proper, first giving eight weeks notice of each sale, in one or more of the public news-papers in this state, containing a description as to the quantity, by estimation, of the lands or tenements to be sold, the situation thereof.

* * * * * * * * * *

DOWNES V. BIDWELL, 182 U. S. 244-391

The territories acquired by Congress, whether by deed of cession from the original states, or by treaty with a foreign country, are held with the object, as soon as their population and condition justify it, of being admitted into the Union, as states, upon an equal footing with the original states in all respects.

* * * * * * * * * *

The words of Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat. 1, with respect to the power of congress to regulate commerce are pertinent in this connection: "This power", said he, "like all others vested in congress is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution.

* * * * * * * * * *

The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest.

* * * * * * * * * *

When the conquest is complete and the conquered inhabitants can be blended with the conquerors, or safely governed as a distinct people, public opinion, which not even the conqueror can disregard, imposes these restraints upon him; and he cannot neglect them without injury to his fame and hazard to his power.

* * * * * * * * * *

A state may acquire property, or domain, in various ways; its title may be acquired originally by mere occupancy, and confirmed by the presumption arising from the lapse of time; or by discovery and lawful possession; or by conquest, confirmed by treaty, or tacit consent; or by grant, cession purchase, or exchange; in fine, by any of the recognized modes by which private property is acquired by individuals. It is not our object to enter into any general discussion of the several modes of acquisition, any further than may be necessary to distinguish the character of certain rights of property which are the peculiar objects of international jurisprudence.

* * * * * * * * * *

Speaking of a change of sovereignty Halleck says, (pp. 76, 814);

Chap. 3, Section 23, The sovereignty of a state may be lost in various ways. It may be vanquished by a foreign power and become incorporated into the conquering state as a province, or as one of its component parts; or it may voluntarily unite itself with another in such a way that its independent existence as a state, will entirely cease.

Chap. 33, Sec. 3, If the hostile nation be subdued, and the entire state conquered a question arises as to the manner in which the conqueror may treat it without transgressing the just bounds established by the rights of conquest. If he simply replaces the former sovereign and, on the submission of the people, governs them according to the laws of the state, they can have no cause of complaint. Again, if he incorporate them with his former states, giving to them the rights, privileges, and immunities, of his own subjects, he does for them all that is due from a humane and equitable conqueror to his vanquished foes. But if the conquered are a fierce, savage and restless people, he may, according to the degree of their indocility govern them with a tighter rein, so as to curb their impetuosity, and to keep them under subjection. Moreover, the rights of conquest may, in certain cases, justify him in imposing a tribute or other burthen, either a compensation for the expenses of the war, or as punishment for the injustice he has suffered from them. * * * Vattel, Droit, des. Gens., Liv. 3, ch. 13, section 201; 2 Curtius, History, etc. liv. 7, cap. 8; Grotius de Jur. Bel. ac. P. Pac. lib. 3, caps. 8, 15; Puffendorf de. Jur. Nat. et. Gent. lib. 8, cap. 6, section 24. Real science du Gouvernement, tome 5, ch. 2, section 5; Heffter, Droit International Section 124; Abegg. Untersuchungen, etc. p. 86.

In American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, the general doctrine was thus summarized in the opinion delivered by Mr. Chief Justice Marshall p. 542, L. ed. p. 255): "If it (conquered territory) be ceded by the treaty, the acquisition is confined and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose."

* * * * * * * * * *

Power to acquire territory either by conquest or treaty is vested by the constitution in the United States. Conquered territory, however, is usually held as a mere military occupation until the fate of the nation from which it is conquered is determined; but if the nation is entirely subdued, or in case it be destroyed and ceases to exist, the right of occupation becomes permanent and title vests absolutely in the conqueror. American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 7 L. ed. 242; 30 Hogsheads of Sugar v. Boyle, 9 Cranch 195, 3 L. ed. 702; Shanks v. DuPont, 3 Pet. 246, 7 L. ed. 668; United States v. Rice, 4 Wheat. 254, 4 L. ed. 564; The Amy Warwick 2, Sprague, 143, Fed. Case No. 342; Johnson v. M'Intosh, 8 Wheat. 588, 5 L. ed. 692. Complete conquest by whatever mode it may be perfected, carries with it all the rights of the former government; or, in other words, the conqueror by the completion of his conquest, becomes the absolute owner of the property conquered from the enemy nation or state. His rights are no longer limited to mere occupation of what he has taken into his actual possession, but they extend to all the property and rights of the conquered state, including even debts as well as personal and real property. Halleck International Law, 839; Elphinstone v. Bedreechund 1, Knapp P. C. C. 329; Vattel 365; 3 Phillimore, International Law 505;

UNITED STATES V. HUCKABEE, 16 WALL, 414-436.

* * * * * * * * * *

What the district attorney expected to accomplish by continuing to prosecute the information after the seizure

and sale of the property by the United States is not perfectly certain, unless he supposed the court might treat the information as one in the nature of a bill in equity to remove a cloud upon the title of the grantees under the United States, arising from the pretense of the present defendants that the deed which they executed to the confederate states was void as having been procured by duress. Concede that, still it is evident that it was an attempt to accomplish what the court, under such a pleading, had no jurisdiction to grant, as the parties interested were citizens of the same state, and no such issue was alleged in the information, and if there had been, and the parties had been citizens of different states, it would nevertheless be clear that the court could not grant any such relief under any process founded upon the Act of Congress, entitled "An Act to confiscate property."

* * * * * * * * * *

Our military forces captured the property while it was in the possession of the confederate states as means for prosecuting the war of the rebellion, and it appears that the captors took immediate possession of the property, and continued to occupy it under the directions of the executive authority until the government of the confederate states ceased to exist, and the unlawful confederation become extinct, when it was sold by the orders of the executive and conveyed to the plaintiff claimants.

All captures in war vest primarily in the sovereign, but in respect to real property Chancellor Kent says, the acquisition by the conqueror is not fully consummated until confirmed by a treaty of peace, or by the entire submission or destruction of the state to which it belonged, which latter rule controls the question in the case before the court, as the confederation having been utterly destroyed no treaty of peace was or could be made, as a treaty requires at least two contracting parties. 1. Kent, Com. (11th ed.) 110; Lawr. Wheat. (2d. ed.) 55; U. S. v. Percheman, 7 Pet. 86. Power to acquire territory either by conquest or treaty is vested by the Constitution in the United States. Conquered territory, however, is usually held as a mere military occupation until the fate of the nation from which it is conquered is determined, but if the nation is entirely subdued, or in case it be destroyed, and ceases to exist, the right of occupation becomes permanent and the title vests absolutely in the conqueror.

Complete conquest, by whatever mode it may be perfected, carries with it all the rights of the former government, or in other words, the conqueror by the completion of his conquest, becomes the absolute owner of the property conquered from the enemy, nation or state. His rights are no longer limited to mere occupation of what he has taken into his actual possession, but they extend to all the property and rights the conquered state, including even debts as well as personal and real property. Halleck Int. Law, 839; Elphinstone v. Bedreechund, Fig. 1 Knapp, P. C. Cas. 329; Vattel 365; 3 Phil. Int. Law, 505.

COOK AGAINST HOWARD, 13 JOHNS., PAGE 276:

Blackstone does not differ from Grotius as to the law of nations laid down by him and other writers. He does not, however, state the case from the year book (7 Edw. IV 14) correctly, and it is the same case which is cited in Brooke. The condition is, that the original owner must come freshly or promptly the same day to claim his property of the captor. Nothing is said of the re-captor. In Gross v. Withers, may be found all the law on the subject, and also the case from the year book in its original language. Lord Mansfield says, that the general proposition that what is taken from an enemy immediately becomes the captors is to be understood when the battle is over; and that is not until all immediate pursuit has ceased, and all hope of recovery is gone. But he says that the rule has been made still more favorable to the owner, in the case of maritime capture, and the property is not changed until there has been a sentence of condemnation; and this principle was adopted by this court, in the case of Wheelwright v. DePeyster. The possession of the horse in this case by the Indian was temporary; the battle was not over, the conflict still continued. If the property were not divested by the capture the jus postliminii still remained in the United States the original owner. This right takes place according to Vattell "As soon as the things taken by the enemy fall into the hands of soldiers belonging to the same nation, or are brought back to the army within their sovereign territories, or the places under his command."

* * * * * * * * * *

But admitting the right of property had vested in the captors, the better opinion is, that, upon the recapture, it would have belonged to the United States. The rule laid down by Vattell (b. 3. ch. 9 s. 164) is the rational one. He says, as the towns and lands taken from the enemy are called conquests, so all movable things constitute the booty, and this booty naturally belongs to the sovereign making war, no less than the conquest; for he alone has such claims against the enemy as to warrant him to seize on his goods and appropriate them to himself. His soldiers are only instruments in his hands, and whatever they do is in his name, and for him, and he may grant them what share he pleases.

It must be apparent that the Supreme Court gave recognition to the proposition, that as a result of the revolution, all property became vested in the conqueror, subject to such provisions as were made for the naturalization and recognition of alien owners, by Treaty.

* * * * * * * * * *

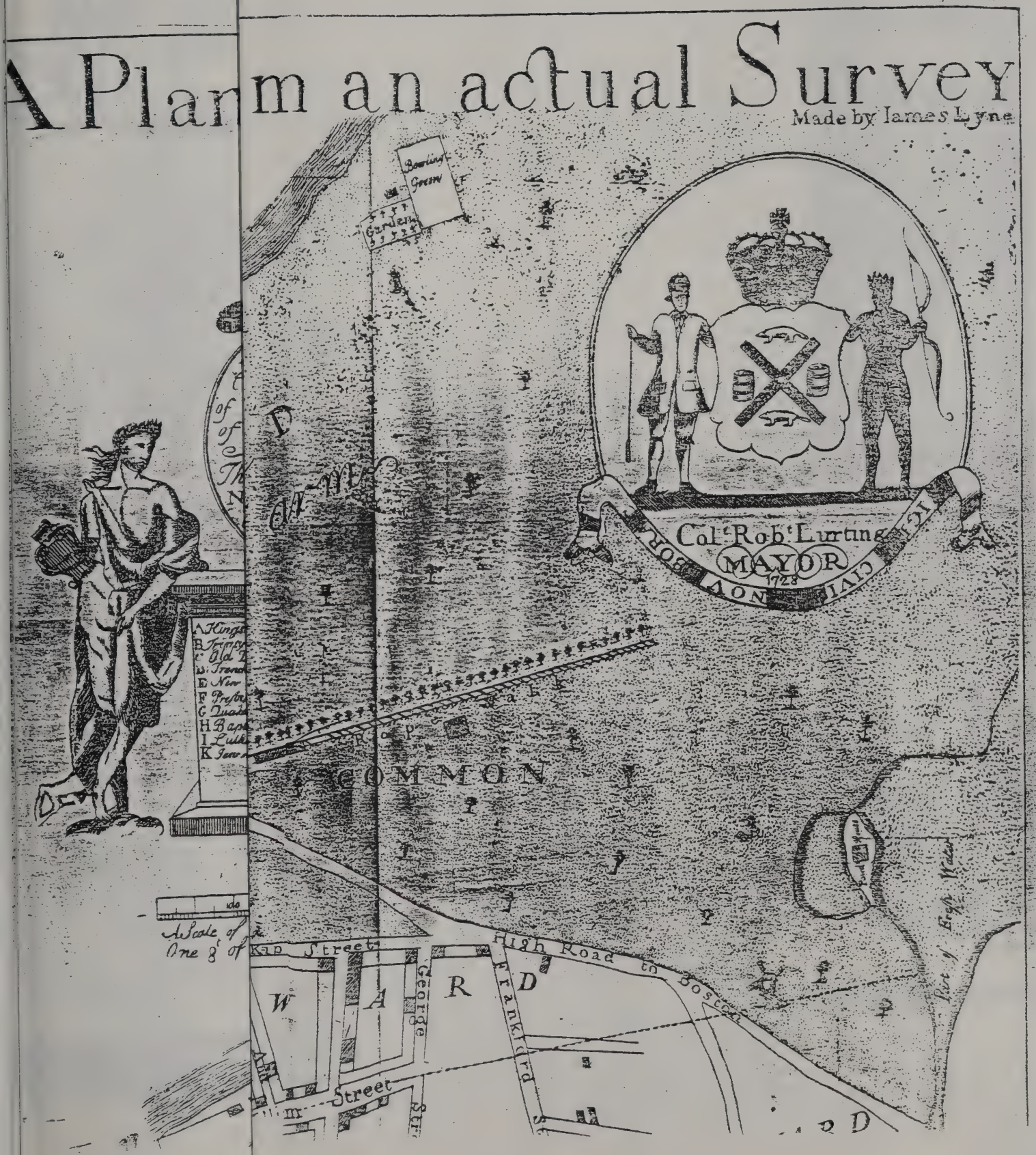
LAWS OF NEW YORK.

CHAP. XLII.

AN ACT TO NATURALIZE THE PERSONS THEREIN NAMED, AND TO PREVENT THE AVOIDANCE OF TITLES IN CERTAIN CASES, BY REASON OF ALIENISM.

Passed 28th February, 1789.

WHEREAS, Francois Adrian Vander Kemp, Reinira, Engelbarta Johanna Vander Kemp, his wife, and Jan Jacob Vander Kemp and Cunira Engelbarta Vander Kemp, his two children; Erneste Guilliaume Baron de Rottenbourgh, Louise Henriette de Rottenbourgh Nee Williamos, his wife, Philip Auguste Hennequin de Rottenbourgh; Elizabeth De Wint, the wife of John De Wint, punior, William Johnston, Adam Calderwood, George Ferguson, Duncan Ferguson, Peter Collin, Samuel Weston, George Lewis, Philip Dubey, Imbert Louis Dubey, Johannes Teitsel, George Gilfert, Carlisle Pollock, Thomas Maule, Richard Bullock, William Thomas, John Frost, William Rhodes, Thomas Brown, Christopher Lange, Maurice Collins, Patrick Collins, Bernard Kelley, William Buckle, John Johnston, William Johnston, John Gamble, James Parker, Thomas Frazer, John Connelly, John Egnew, Thomas Armstrong, Andrew Bashford, James Pearson, Spencer Philpot, Andrew Brown, Robert Smith, Charles Wilkes, Thomas Elli-


A Plan
m an actual Survey
Made by James Lyne
Bowling Green
Garden
Col. Rob. Lurting
MAYOR
1728
COMMON
A Scale of
One 8 of
Kap Street
High Road to Boston
W A R D
George
Frankford
Street

and sale of the property by the United States is not perfectly certain, unless he supposed the court might treat the information as one in the nature of a bill in equity to remove a cloud upon the title of the grantees under the United States, arising from the pretense of the present defendants that the deed which they executed to the confederate states was void as having been procured by duress. Concede that, still it is evident that it was an attempt to accomplish what the court, under such a pleading, had no jurisdiction to grant, as the parties interested were citizens of the same state, and no such issue was alleged in the information, and if there had been, and the parties had been citizens of different states, it would nevertheless be clear that the court could not grant any such relief under any process founded upon the Act of Congress, entitled "An Act to confiscate property."

* * * * * * * * * *

Our military forces captured the property while it was in the possession of the confederate states as means for prosecuting the war of the rebellion, and it appears that the captors took immediate possession of the property, and continued to occupy it under the directions of the executive authority until the government of the confederate states ceased to exist, and the unlawful confederation become extinct, when it was sold by the orders of the executive and conveyed to the plaintiff claimants.

All captures in war vest primarily in the sovereign, but in respect to real property Chancellor Kent says, the acquisition by the conqueror is not fully consummated until confirmed by a treaty of peace, or by the entire submission or destruction of the state to which it belonged, which latter rule controls the question in the case before the court, as the confederation having been utterly destroyed no treaty of peace was or could be made, as a treaty requires at least two contracting parties. 1. Kent, Com. (11th ed.) 110; Lawr. Wheat. (2d. ed.) 55; U. S. v. Percheman, 7 Pet. 86. Power to acquire territory either by conquest or treaty is vested by the Constitution in the United States. Conquered territory, however, is usually held as a mere military occupation until the fate of the nation from which it is conquered is determined, but if the nation is entirely subdued, or in case it be destroyed, and ceases to exist, the right of occupation becomes permanent and the title vests absolutely in the conqueror.

Complete conquest, by whatever mode it may be perfected, carries with it all the rights of the former government, or in other words, the conqueror by the completion of his conquest, becomes the absolute owner of the property conquered from the enemy, nation or state. His rights are no longer limited to mere occupation of what he has taken into his actual possession, but they extend to all the property and rights the conquered state, including even debts as well as personal and real property. Halleck Int. Law, 839; Elphinstone v. Bedreechund, Fig. 1 Knapp, P. C. Cas. 329; Vattel 365; 3 Phil. Int. Law, 505.

COOK AGAINST HOWARD, 13 JOHNS., PAGE 276:

Blackstone does not differ from Grotius as to the law of nations laid down by him and other writers. He does not, however, state the case from the year book (7 Edw. IV 14) correctly, and it is the same case which is cited in Brooke. The condition is, that the original owner must come freshly or promptly the same day to claim his property of the captor. Nothing is said of the re-captor. In Gross v. Withers, may be found all the law on the subject, and also the case from the year book in its original language. Lord Mansfield says, that the general proposition that what is taken from an enemy immediately becomes the captors is to be understood when the battle is over; and that is not until all immediate pursuit has ceased, and all hope of recovery is gone. But he says that the rule has been made still more favorable to the owner, in the case of maritime capture, and the property is not changed until there has been a sentence of condemnation; and this principle was adopted by this court, in the case of Wheelwright v. DePeyster. The possession of the horse in this case by the Indian was temporary; the battle was not over, the conflict still continued. If the property were not divested by the capture the jus postliminii still remained in the United States the original owner. This right takes place according to Vattell "As soon as the things taken by the enemy fall into the hands of soldiers belonging to the same nation, or are brought back to the army within their sovereign territories, or the places under his command."

* * * * * * * * * *

But admitting the right of property had vested in the captors, the better opinion is, that, upon the recapture, it would have belonged to the United States. The rule laid down by Vattell (b. 3. ch. 9 s. 164) is the rational one. He says, as the towns and lands taken from the enemy are called conquests, so all movable things constitute the booty, and this booty naturally belongs to the sovereign making war, no less than the conquest; for he alone has such claims against the enemy as to warrant him to seize on his goods and appropriate them to himself. His soldiers are only instruments in his hands, and whatever they do is in his name, and for him, and he may grant them what share he pleases.

It must be apparent that the Supreme Court gave recognition to the proposition, that as a result of the revolution, all property became vested in the conqueror, subject to such provisions as were made for the naturalization and recognition of alien owners, by Treaty.

* * * * * * * * * *

LAWS OF NEW YORK.

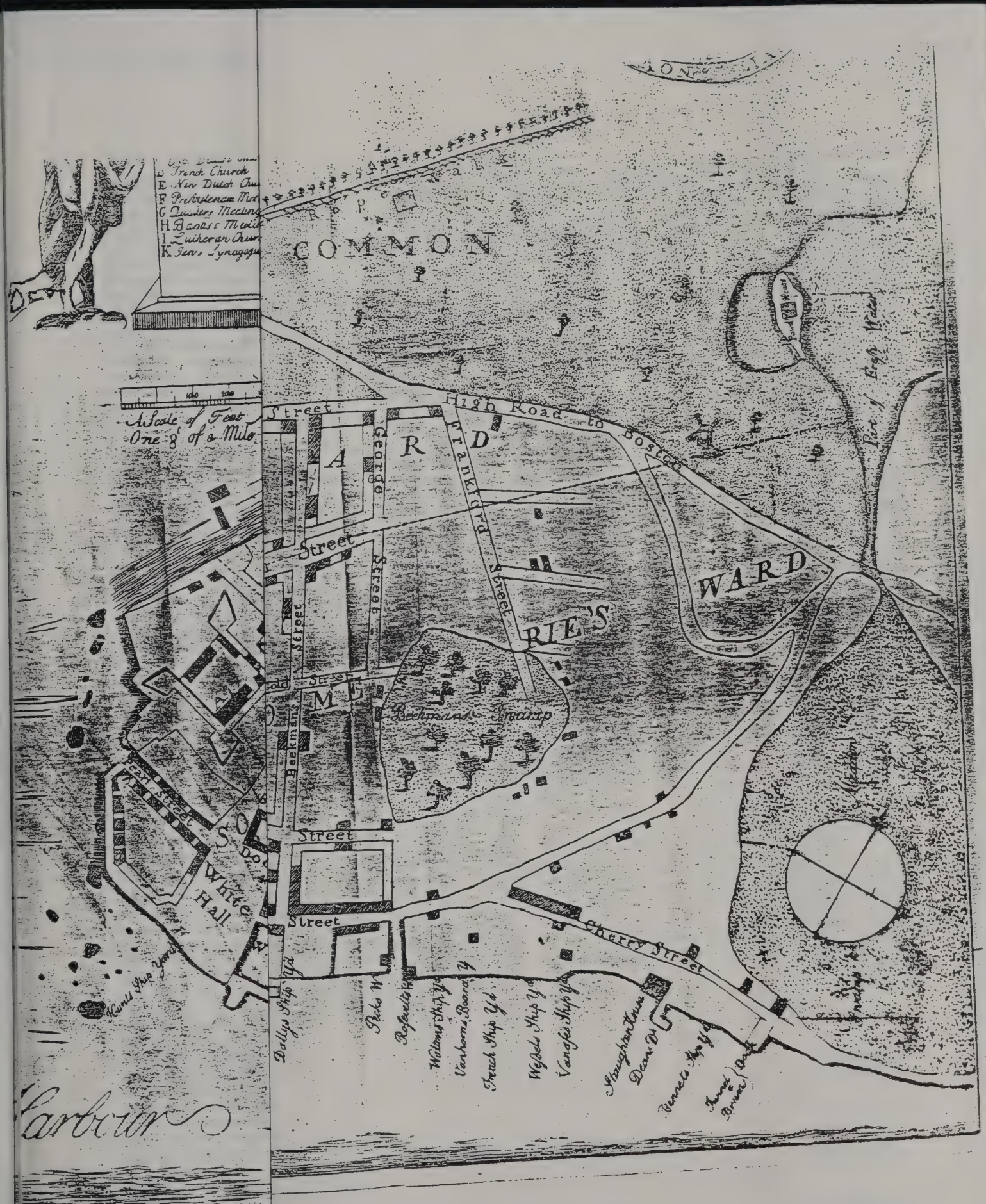
CHAP. XLII.

AN ACT TO NATURALIZE THE PERSONS THEREIN NAMED, AND TO PREVENT THE AVOIDANCE OF TITLES IN CERTAIN CASES, BY REASON OF ALIENISM.

Passed 28th February, 1789.

WHEREAS, Francois Adrian Vander Kemp, Reinira, Engelbarta Johanna Vander Kemp, his wife, and Jan Jacob Vander Kemp and Cunira Engelbarta Vander Kemp, his two children; Erneste Guilliaume Baron de Rottenbourgh, Louise Henriette de Rottenbourgh Nee Williamos, his wife, Philip Auguste Hennequin de Rottenbourgh; Elizabeth De Wint, the wife of John De Wint, punior, William Johnston, Adam Calderwood, George Ferguson, Duncan Ferguson, Peter Collin, Samuel Weston, George Lewis, Philip Dubey, Imbert Louis Dubey, Johannes Teitsel, George Gilfert, Carlisle Pollock, Thomas Maule, Richard Bullock, William Thomas, John Frost, William Rhodes, Thomas Brown, Christopher Lange, Maurice Collins, Patrick Collins, Bernard Kelley, William Buckle, John Johnston, William Johnston, John Gamble, James Parker, Thomas Frazer, John Connelly, John Egnew, Thomas Armstrong, Andrew Bashford, James Pearson, Spencer Philpot, Andrew Brown, Robert Smith, Charles Wilkes, Thomas Elli-

A Plan of the City of New York from an actual Survey
Made by James Lyne
To His Excellency
JOHN MONTGOMERIE Esq
Capt Genl & Govr in Chief
of his Majesties Provinces
of NEW YORK NEW JERSEY
&c
This Plan of the City of
NEW YORK is humbly Dedicated
by Your Excellancy's Obe
& most humble Servt
Wm Bradford
A Kings Chapel built 1698
B Trinity Church built
C Old Dutch Church
D French Church
E New Dutch Church
F Presbyterian Meeting
G Quakers Meeting
H Baptist Meeting
I Lutheran Church
K Jews Synagogue
1 Govrs House
2 Secretaries Office
3 Custom House
4 Weigh House
5 City Hall
6 Barracks Sugar House
7 Exchange
8 Fish Market
9 Old Slip Market
10 Meat Market
11 Slip Market
A Scale of Feet
One 8 of a Mile
660 Foot
North River
East River
Bowling Green
Garden
Col. Rob. Lurting
MAYOR
1728
COMMON
BROAD WAY
Wall Street
New Slip
Nassau Street
Pine Street
Cedar Street
Liberty Street
Maiden Lane
Cortlandt Street
Dey Street
Fulton Street
Chambers Street
Warren Street
Chatham Street
Beekman Street
Ann Street
Frankford Street
George Street
Rose Street
High Road to Boston
Wind Mill Gate
Eng. Church Yard
Trinity Church
Hudson's Dock
Hudson's Dock
Low Water Mark



nted for D.T. Valentine's History

Printed for D. T. Valentine's History of New York 1853 by Geo: Howard 120 Water Street New-York.

son, William Hanson, Samuel Campbell, Samuel Hill, Peter Mac Vean, George Walker, John Baptist Oliver, John Speyer, Philip Mark, Charles Borman, James Cockcroft, Thomas Allen, John M'Millan, Hugh Cameron, Joseph Searight, James Cooper, Orchibald M'Lean, Terence O'Donnel, Michael Bogley, John Andrew, William M'Lyment, Walter M'Intosh, George Brown, William Cumming, Kenveth Chessam, Findly M'Donald, Alexander M'Donald, John Chessam, Archibald Frazer, Alexander M'Donald, Joseph Newlands, James Eason, Charles M'Glashan, Alexander M'Glashan, Thomas Armstrong, John Dewaier, John Morison, Charles Orangebay, James Eadie, John M'Gellevray, Tobias Hoffman, George Speth, William Cammeyer, John Christopher Ehninger, Dennis Sinnott, Bartholomew Barnewall, John Baptist Deloffre, Marian LeBrun, Auguste Berthoud, Jean Boand, James Malide, Conrad Bernhard Glaan, Robert White, Albrecht Behrens, Joseph Maud, Samuel Kerr, John Smith, Gilchrist Dickenson, John Beeker, Duncan M'Vean, Isaac Ximenes, Robert Stewart, James Willson, Peter M'Vean, John M'Naughtan, Duncan M'Martin, James Cleary, Peter Fisher, Peter M'Kinlay, James Christie, John Taylor, James Morison, Robert Robertson, Peter Robertson, Daniel M'Intire, Duncan M'Farland, John M'Intire, John M'Beth, Joseph Vewton, Peter Forbes, Daniel Stewart, Thomas Stewart, John Jacob Aster, Alexander Wamsley, Hypolite Penet, Nicholas Meade, John Ritson, Daniel M'Kennon, John Jacob Bush, Angus M'Naughtan, junior, Daniel M'Naughtan, John M'Naughtan, junior, Duncan M'Naughtan, Alexander Robertson, Moses Malloch, Patrick M'Lean, Donald M'Kercher, Finlay M'Callum, James Campbell, Neal M'Gregor, John Frazer, Duncan M'Laren, Duncan M'Vean, James M'Vean, John M'Vean, Duncan M'Vean, junior, Lawrence Craimer, John Barbour, Samuel Wallcott, Hendrick Van Wagner, James M'Vean, James Carmichael, Duncan M'Vean, James M'Vean, James Mason, Richard Mason, George Mason, William M'Kee, junior, James M'Kee, Robert Barker, William Barber, John Porteous, John Saeger, Andrew Grosend, Andreas Koch, George Betzholtz, Lawrence Gleichman, Michael Willman, Frederick Gleichman, Hendrick Z. Bonse, Jacob Weisyerber, Christian Hartwick, William Omeagher, Rodolphus Kent, John Campbell, Abijah Gilbert, Robert Burrell, William Stockman, Peter Deschent, Tobias Hoffman, have by their several petitions to the legislature, prayed to be naturalized; Therefore,

I. Be it enacted by the people of the State of New York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That the above named persons shall be, and they are hereby respectively naturalized, and shall from and after having taken and subscribed, in any court of record within this state, the oath of allegiance to this state, and abjured and renounced all allegiance and subjection to all and every foreign king, prince, potentate and state, in all matters ecclesiastical as well as civil, be deemed citizens of this state, to all intents, constructions and purposes whatever; and that the court in which any of the persons hereinbefore mentioned shall be admitted to take such oath, shall cause an entry thereof to be made in the minutes of the said court; and shall give a certificate to such persons respectively, purporting that such person hath been admitted to such oath, in the said court, in pursuance of this act; and such persons upon taking such oath, shall respectively pay to the judges of such court, six shillings, and to the clerk thereof, three shillings.

II. And be it further enacted by the authority aforesaid, That no lands, tenements or hereditaments in this state, heretofore purchased by any of the persons herein before-named, shall escheat to the people of this state, by reason or on account of such person's then being an alien; but all such lands, tenements and hereditaments, shall vest in such purchaser, in the same manner as if such purchaser had been naturalized at the time of such purchase; any law to the contrary notwithstanding. Provided always, That the said Jan Jacob Vander Kemp, and Cunira Engelbarta Vander Kemp, shall respectively take the oath of allegiance and abjuration, within one year after they shall respectively attain the age of twenty-one years, or be precluded from the benefits intended to be secured to them by this act; And provided also, That such other of the persons above named, and hereby naturalized, as shall not take the oath of allegiance and abjuration aforesaid, in manner herein before directed, within twelve calendar months next after the passing of this act, shall have no manner of benefit by this act: any thing herein contained to the contrary notwithstanding.

III. And be it further enacted by the authority aforesaid, That no title or claim, of any inhabitant of this state, who is now a citizen of this state, under any patent or purchase of lands, tenements and real estate, granted to, or made by an alien, at any time inhabiting in this state, since the twenty-seventh day of January, in the year one thousand seven hundred and seventy, shall be defeated merely upon the pretence of alienism in the grantee or purchaser, or any person holding as by descent or otherwise, since such grant or purchase; but that such title shall be adjudged to be good, the plea or pretence of alienism, in such case notwithstanding.

IV. And be it further enacted by the authority aforesaid, That no title or claim accruing between the third day of September, 1783, and the time of passing this act, to any citizen or citizens of this state, in any lands, tenements or hereditaments, granted under the great seal of the late colony, now state of New-York, prior to the 14th day of October, 1775, shall be defeated or prejudiced, upon the pretence of alienism in the grantor or grantors thereof, or any other person or persons through whom his, her or their estate therein may have been derived; but that such title shall in like manner be adjudged to be good and valid, the plea or pretence of alienism notwithstanding.

V. And be it further enacted by the authority aforesaid, That it shall be lawful for the heirs or devisees of Richard Montgomerie, Esquire, late a major-general in the armies of the United States, to sell, dispose of, grant and convey, to any citizen or citizens of this state, and his, her or their heirs and assigns, the lands, tenements and hereditaments whereof he was seized, or to which he was entitled at the time of his death, notwithstanding the plea of pretence of alienism in such heirs or devisees.

* * * * * * * * * *

Treaties.

The completion of all wars is the Treaty of Peace. These treaties have been before our courts for construction and application, with respect to property rights.

A few of the important holdings upon this question of treaty, are here presented:

M'ILVANE V. COXE'S LESSEE, 2 CRANCH, P. 280.

Patterson, J.

The provision of the treaty, "that there shall be no future confiscations" settles the point of a capacity to take at present, and not in future. It was the universal

understanding that a sale after the treaty, of property, before confiscated, was not breach of the treaty. How then can there be a future confiscation but in consequence of a future taking? And he who can take in future is not an alien.

* * * * * * * * * *

The plaintiff's title to the land accrued when she was not an alien, nor could she be affected by the disability of an alien, but was as much a citizen of the now state of Connecticut as any person at present within it, and her descent was cast under its laws.

Her title is also secured by the treaty of peace, which stipulates that there shall be no further forfeitures or confiscations on account of the war upon either side. The subsequent statute of this state declaring aliens incapable of purchasing or holding lands in this state, does not affect the plaintiff's title, otherwise than by recognizing and enforcing it, for it hath a proviso that "the act shall not be construed to work a forfeiture of any lands which belonged to any subjects of the King of Great Britain before the late war, or to prevent proprietors of such lands from selling and disposing of the same to any inhabitant of any of the United States".

* * * * * * * * * *

We see an old government dissolved and a new one created. The people at first, and their representatives afterwards, declare by law, all men abiding within their territory subjects of the new government. They pass treason acts, define allegiance, and enforce its duties by the accustomed sanctions of the law. These laws operated on D. C. He was an abider within their territory. They claim him as a subject, and punish him for refusing to yield obedience. Shall, then, this same government, which, with a voice of thunder proclaimed him a subject, and punished him as one, or shall an individual under its laws now say to him, you are an alien? Shall he be declared a subject to punish him and an alien to punish him? A subject to take all he has, and an alien to prevent his acquiring any in future. Shall be made poor by citizenship, and be kept poor for want of it? No, I apprehend not. The government, and all claiming through its laws are estopped to say he is an alien, and no act of his as I shall directly show would alter his condition. The Legislature never meant to adopt such inconsistent and repugnant principles. They carried through their work correctly on their own plan. It is by pursuing now an opposite one on a scheme of private interest that the incongruity is produced. They had a right to declare the Colonists members of the new government, on the clear Republican principle that the minority must yield to the majority. But they had no intention of going further by illegally taking from them their birthright, their capacity to inherit lands. These laws also destroy at once the fanciful doctrine of election in case of civil war. It may, for aught I know, be just enough to give men a free election in such cases to adhere to the old, or to join the new government, but then was the time to have acted on this magnanimous principle. The Legislature adjured it; they declared by their treason act that no Jerseyman had an election to join against his country.

* * * * * * * * * *

Now I am at a loss to discover how perpetual allegiance to the government established in New Jersey under the authority of the people, can be consistent with the rights of that charter which created and set in motion that very government. What is the true meaning of this exception in the 22nd section? What are the rights secured by that charter? The principal are a Republican form of government; legislative council, and general assembly; annual election; freedom of conscience in matters of religion; trial by jury, etc. These are the rights alluded to; and it is easy to see that all those parts of the common law which grow out of the monarchy of England were inconsistent with these rights, but so is that principle which would transfer the sacred duty of allegiance, formerly due to the King, with equal force and affect to the new sovereign, the people themselves.

The common law import of the term allegiance being settled, it follows conclusively that the words must receive the same interpretation when introduced into the statute. That common law expressions must receive the common law exposition is too clear to admit of doubt.

The revolution which dismembered the mighty empire of Briton, is a subject of curious, of interesting, and, as introductory on this occasion, of profitable contemplation. Its leading principle was the reverse of what has been stated by the opposite counsel, or I am ignorant of its origin and design.

I insist that when the authority of the mother country as it was called, was rejected, the inhabitants of the former colonies were so far in a state of nature, that each man was at liberty to choose his side; remain a subject, or become a citizen. This interval of election continued until new systems of government were formed, adopted, and organized, after which period (not previously) residence was an implied assent to share the fortunes and destinies of the United States. In Pennsylvania the rule was practically exemplified in the memorable case of Chapman the British Light Horseman, charged with treason, 1 Dall. 53.

When government is regularly established, a majority with propriety governs the minority; to institute it legally individual assent is necessary, or it deserves the name of usurpation, and ought to be execrated as tyranny. 1 Wilson's Works, 316, 317.

* * * * * * * * * *

We admit that he could take lands; so might an alien, but he could not hold in either capacity. In high treason the forfeiture of lands acrues not from the time of conviction but from the date of offense.

* * * * * * * * * *

The common law of England, say Judge Tucker and Judge Wilson, was only so far adopted in the states as it was proper and applicable to the situation and the circumstances of the colonies, and was different in different colonies.

* * * * * * * * * *

If the common law, introduced through the Constitution fails, what is the next prop by which it is attempted to support a claim in opposition to the language of our revolution?

We are told that the capacity of British subjects to hold lands in the United States is recognized by the treaties of 1783 and 1794, and that surely it was not meant to encourage them to purchase that we might escheat. This part of the argument is introduced by a reference to Judge Tucker for the distinction between aliens by birth, and aliens by election. 1 Tuck. Bl. Part 2, p. 102, s. 2, I acknowledge that Judge Tucker does state that, by the treaty of peace, the common law principle that the antenati of both countries were natural born to both, and, as such, capable of holding, or inheriting, seems to be revived. As far as respects authority, I oppose to Judge Tucker the Virginia Assembly, who expressly declared that all persons not being citizens of the United States are aliens.

1 Tuck. Bl. part 2, p. 55. Judge Tucker founds himself as to the common law principle upon Bracton and Calvins case, not adverting to the difference in point of fact, that the British who claim as in this instance, never were in allegiance to our States.

* * * * * * * * * *

I contend, therefore, that the sixth article of the treaty of third September, 1783, as far as respects property is confined in its letter, spirit, and meaning, to the preservation of estates owned antecedently to the war which had not been actually confiscated and seized; and to the consequences of an active part taken during that period.

This construction is perfectly warranted by the case decided in Connecticut (Kirby's reports) and by the principles as laid down by that very eminent English lawyer Wooddeson.

* * * * * * * * * *

The construction of the treaty attempted by our opponents can only be maintained by reference to the common law doctrine that natives of Great Britain were constructively born in America.

The fifth article assists in the construction of the sixth, and is recommendatory where the confiscated laws had been actually carried into effect. The ninth article of the treaty of the 19th November 1794, is in perfect unison with the idea I submitted to the consideration of the Court. Different ideas had been entertained in the different states as to the policy of permitting aliens to hold lands. It was always a matter of state regulation. In Pennsylvania they might purchase; now they may take by descent.

The treaty, therefore, so far from looking to future acquisitions by purchase, is confined to those who now hold.

It is observable that Judge Tucker does not express himself decidedly. He uses the qualified and guarded expression that the treaty seems to have revived the common law principle that the antenati of both countries were natural born to both. He qualifies his argument still further by saying, British subjects born since the separation are aliens; but such of them as were born before the definitive treaty of peace took place, seem to be entitled to the benefits thereof, so far as they had, or might be presumed to have, any interest in lands in the United States. All others appear to be aliens in the strictest sense of the word, except as their cases may have been remedied by the late treaty of the 19th Nov. 1794.

JOHANNES JECKER ET AL. V. DEAN MAGEE, 9 WALL. P. 32-35.

* * * * * * * * * *

The first treaty between the United States and Switzerland was ratified May 3, 1848. The second was made in Nov. 1850, nearly three years before the death of Peter Yaker, but not ratified until Nov. 1855, more than two years after Yaker's death.

It has been held that "A treaty binds the contracting parties from its conclusion, and that is understood to be from the day it was signed."

1. Kent. Com. 170; U. S. v. Reynes, 9 How. S. C. 148.

This doctrine is well settled, we believe, at least so far as the contracting parties, the governments making the treaties are concerned. But the rule, so far as individual rights are to be affected, is different (U. S. v. Arredondo, 6 Pet. 749); and for this distinction there seems to us a good reason.

A treaty is in its nature, a contract between two nations; not a legislative act. But in the United States a different principle is established. Our constitution declares it to be "The law of the land". Foster v. Nelson, 2 Pet. 314.

A treaty, to be valid, must be made by and with the consent of the senate provided two-thirds of the senators present concur. Until consent is given by the Senate no one is bound by it as a law; it is until then subject to amendment or modification and can be rejected entirely.

To construe the law so as to make the ratification of the treaty relate back to its signing, thereby divesting the widow of her vested rights, would be making it a law before it really became such. It would be taking private property under the pretense of a law when in fact no law existed at the time to authorize it.

* * * * * * * * * *

It is undoubtedly true, as a principle of International law, that, as respects the rights of either government under it, a treaty is considered as concluded and binding from the date of its signature. In this regard the exchange of ratifications has a retroactive effect, confirming the treaty from its date. Wheat. Int. Law, by Dana, 336. But a different rule prevails where the treaty operates on individual rights. The principle of relation does not apply to rights of this character, which were vested before the treaty was ratified. In so far as it affects them it is not considered as concluded until there is an exchange of ratifications, and this we understand to have been decided by this court in Arredonda's case, reported in 6 Peters. The reason of the rule is apparent. In this country, a treaty is something more than a contract, for the Federal Constitution declares it to be the law of the land. If so, before it can become a law, the Senate in whom rests the authority to ratify it, must agree to it. But the Senate are not required to adopt or reject it as a whole but may modify or amend it, as was done with the treaty under consideration.

ELIZA BROWN V. FRANCIS SWANN ET AL, 8 PETERS, 435.

* * * * * * * * * *

By the second article of the treaty of the 22nd of February 1819, between the United States of America and Spain, His Catholic Majesty cedes to the United States in full property and sovereignty, all the territories which belong to him, situated on the eastward of the Mississippi, known by the name of "East and West Florida".

* * * * * * * * * *

The 8th Article was not intended to enlarge the session. Its principle object is to secure certain rights existing at the time but not complete. It stipulates that all the grants of lands (in Spanish "concessions of land") made before the 24th of January, 1818, by this Catholic Majesty, or by his lawful authorities in the said territories ceded by his Majesty to the United States, shall be ratified and confirmed (in Spanish shall remain ratified and confirmed) to the persons in possession of the lands (in the Spanish in possession of them, that is, of the concessions) in the same extent that the same grants (in Spanish they) would be valid if the territories had remained under the dominion of his Catholic Majesty.

It may be worth observing that the language of the article is not "All grants made by his Catholic Majesty, or by his lawful authority" which might perhaps involve

an inquiry into the precise authority, or instructions given by the crown to the person making the grant, and might impose on the claimant the necessity of showing that authority in each case, but "By his Catholic Majesty, or his lawful authorities in the said territories ceded by his Majesty to the United States." That is by those persons who exercised the granting power by authority of the crown. This is the generally received meaning of the words. They are equivalent to the words competent authorities, used in their place by the King of Spain in his ratification of the treaty.

* * * * * * * * * *

This is admitted by the counsel for the United States. So far, then, as respects East Florida, the term "Lawful authorities" designates the governor as certainly as if he had been expressly named in the eighth article of the treaty. He is the officer who was empowered by his sovereign to make grants of lands in that province, and and in ceding the province to the United States, his sovereign has stipulated that grants made by him shall be as valid as if the province had remained under his dominion.

It has been already stated, that the acts of an officer to whom a public duty is assigned by his king, within the sphere of that duty, are, prima facie, taken to be within his power. This point was fully considered and clearly stated by this court in the case of Arredondo, and the principles on which the opinion rests are believed to be too deeply founded in law and reason ever to be successfully assailed. He who would controvert a grant executed by the lawful authority with all the solemnities required by law, takes upon himself the burden of showing that the officers has transcended the powers conferred upon him, or that the transaction is tainted with fraud.

This the counsel for the United States undertakes to do. He insists that Governor Coppinger has transcended his power in making the title now under consideration for a larger quantity of land than he was empowered to grant, and on a consideration not warranted by law.

* * * * * * * * * *

The eighth article declares that "No grant in the Opelousas, Atacapas, and Natchitoches, shall exceed one league in front by one league in depth; but when the land granted shall not have that depth, a league and a half in front by a half league in depth, may be granted."

* * * * * * * * * *

Can those persons to whom assignments of large portions of territory have been made for the establishment of factories, such as water or steam mills, who did not then comply, nor have not since presented themselves to establish their machinery (allowing that none exists in the province which is known), be considered now, or in the future, with any right? If in a space of time, such as has elapsed until now, they have not established their works, will there be any reason why said lands should not be declared open, and revert to the class of public lands?

* * * * * * * * * *

While Florida remained a province of Spain, the right of his Catholic Majesty acting in person or by his officers to distribute lands according to his pleasure, was unquestioned. That he was in the constant exercise of this power was well known. If the United States were not content to receive the territory charged with titles thus created, they ought to have made, and they would have made, such exceptions as they deemed necessary. They have made these exceptions. They have stipulated that all grants made since the 24th of January, 1818, shall be null and void.

* * * * * * * * * *

In his original application to Governor Coppinger, the petitioner described with precision the lands he solicits. The decree conforms to the petition, and the full title to both. That instrument, after stating the prayer of Clarke, adds, "and having pointed out a competent tract on the west side of St. Johns River, above Black Creek, at a place called White Spring, that is vacant, etc. therefore I have resolved to grant, as in the name of His Majesty I do grant, to the said George Clarke the aforementioned five miles square of land for himself, his heirs and successors, in absolute property, and I do issue, by these presents, a competent title, whereby I separate the royal domain from the rights and dominion it had to said lands." etc.

The prayer of the petitioner was granted, and the surveys were made. The plats were laid before the District Court, and show that one containing 8,000 acres was surveyed within the bounds of the grant. Two others one for five, and the other for three thousand acres, were surveyed elsewhere. The judge confirmed the title of the petitioner to the three surveys.

The grant conveyed to Clarke the land described in the instrument and no other. A permit to survey other lands can be considered only as a new order of survey, depending for its validity on the power of the person who made it. On the 25th of January, 1819, Governor Coppinger did not possess this power. The treaty of February, 1819, had declared that all grants (concessions) made after the 24th of January, 1818, should be null and void. The acts of Congress forbid the allowance of any order of survey made after that date. So much of the decree as sanctions these two surveys of five and three thousand acres, is, in our opinion, erroneous.

Possession.

The revolution repealed and terminated all English laws. Any rights that Trinity may have had in contemplation, by virtue of any wrongful possession of any part of the Bogardus Farm, and I mean any part that she had actually enclosed and improved, could not avail the church, unless at least the prescribed period under the English law in the province had actually expired, before July 4th, 1776, the date of the severance of all relations between the colonies and England.

One authority will suffice on this point:

OGDEN ADM. VS. BLACKLEDGE, 2 CRANCH, 272.

The second inquiry involved in the general question is, whether, if the Act of 1789 repealed the limitation of 1715, the latter had operated upon this case before the repeal.

The defendant's testator died in 1780.

The plaintiff's testator was a British subject, and his right of action was suspended, not only by the act of assembly for North Carolina, passed in 1777, c. 2, s, 101, (Iredell's Digest, P. 318) but by the law of Nations, which prohibits an alien enemy from maintaining any action in the courts of the Nation with whom his severeign is at war; and his right of action was not restored until the act of assembly of 1787 c. 1, (Iredell's Digest, P. 607) declared the treaty with Great Britain to be the law of the land, and directed the courts to decide accordingly.

By the fourth article of the definitive treaty of peace,

creditors are to meet with no lawful impediment to the recovery of their debts. The limitation, therefore, could not begin to run before the removal of all such lawful impediments. The treaty was ratified on the 14th of January, 1784, and even calculating from that date, only five years had elapsed before the repeal.

It may be remarked also, that this same Samuel Cornell is one of the persons expressly named in the Act of Confiscation of October 1779, c. 2 (Iredell's Digest, p. 479), and therefore it cannot be contended that he was not one of the persons whose rights of action were suspended by the act of 1777 c. 2.

At the time of the repeal the plaintiff was entitled to bring and maintain his action. No right had been vested in the defendant under the act of limitations, and, therefore, the principle does not apply, that the repeal shall not divest a right.

Acts of limitation do not absolve the debt, they only bar the remedy. 5 Burr. 2628, Quantock vs. England. They are nothing more than legal impediments. The replication of the treaty was therefore good.

March 6th. Cushing J., delivered the opinion of the Court which was entered on the minutes as follows:

This court having considered the question whether an Act of Assembly recited in the plea of the defendant was, under all the circumstances stated, and the various acts passed by the Legislature of North Carolina, a bar in this action; which question, in consequence of an opposition in the opinion of the judges of the circuit court for the District of North Carolina, was certified to this court to be finally decided, is of opinion, that the Act of the Assembly recited in the said plea, is, under all the circumstances stated, no bar to the plaintiff's action, the same having been repealed by the Act of 1789, c. 23, at which time several years had not elapsed from the final ratification of the Treaty of Peace between Great Britain and the United States; that being the period when the Act of limitations began to run against debts due by citizens of the United States to British creditors.

ST. LOUIS SMELTING ETC. COMPANY VS. KEMP
104 U. S. 636; decided 1881.

There are cases in which a grant is absolutely void; as where the state has no title to the thing granted, or where the officer had no authority to issue the grant.

* * * * * * * * * *

We may, therefore, assume as the settle doctrine of this court, that if a patent is absolutely void upon its face, or the issuing thereof was without authority, or was prohibited by statute, or the State had no title, it could be impeached collaterally in a court of law in an action of ejectment.

* * * * * * * * * *

If the patent, according to the doctrine, be absolutely void on its face it may be collaterally impeached in a court of law. It is seldom, however, that the recitals of a patent will nulify its granting clause, as, for instance, that the land which it purports to convey is reserved from sale. Of course, should such inconsistency appear, the grant would fail. Something more, however, than an apparent contradiction in its terms is meant, when we speak of a patent being void on its face. It is meant that the patent is seen to be invalid, either when read in the light of existing law, or by reason of what the court must take judicial notice of; as for instance that the land is reserved by statute from sale, or otherwise appropriated; or that the patent is for an unauthorized amount, or is executed by officers who are not entrusted by law with the power to issue grants of portions of the public domain.

On the other hand, a patent may be collaterally impeached in any action, and its operation as a conveyance defeated by showing that the department had no jurisdiction to dispose of the lands; that is, that the law did not provide for selling them, or that they had been reserved from sale or dedicated to special purposes, or had been previously transferred to others. In establishing any of these particulars, the judgment of the department, upon matters properly before it, is not assailed nor is the regularity of its proceedings called into question; but its authority to act at all is denied, and shown never to have existed.

Sixty Years.

What was the prescribed period?

THE VICE-CHANCELLOR TELLS US ON PAGE 760: **"It is to be borne in mind, that the plea was adjudged to be valid in law, by the court for the correction of errors, not because it set up an adverse possession of one hundred and twenty-five years, but because the corporation had maintained such possession for a period long enough to bar a writ of right. (See report of plea, Bogardus v. Trinity Church 4 Paige, 178, and 15 Wend. 111). This limitation, in 1705, was sixty years. In 1788 it was reduced to twenty-five years."**

It must be evident that any leasing by Trinity Church, (for the record is replete with the claim of leasing), would be of no avail unless sixty years had intervened between the alleged leasing and the revolutionary war. No rights had become vested unless sixty years and one day had elapsed, and the statute could not have been a bar unless the prescribed period had expired.*

Therefore let us limit our consideration only to those which they claim were made prior to 1715. Any leasing after 1715 could not have matured into a vested right before the revolution, when English laws were repealed.

Before taking up a discussion of these leases, it is well to direct your attention to the different maps, from some of which it will be seen that the description given by Valentine, Clerk of the Common Council, really covered the old Company's Farm, Duke's Farm, King's Farm. These maps will help my readers to locate the different leases, which have been relied upon in this case for proof as to Trinity's possession of the Bogardus farm.

Plate number thirty-four, is a reproduction of a map by F. Maerschalk, City Surveyor.

The endorsement thereon states it is a "Copy of an original map in the possession of the Corporation of Trinity Church," and coming from such a source, I am sure that the Vice-Chancellor, at least, vouched for its authenticity.

He tells us that the map was published as of the year 1755.

This map, as do the twin maps thirteen and fourteen, shows the southern boundary of King's Farm at Partition Street (now known as Fulton Street), and the northern boundary, at a line between Warren and Chambers Streets; in other words, that it stopped for its northern boundary, at the palisades. These palisades started at James and Cherry Streets, ran diagonally across Duane and Pearl

Streets, and so irregularly west, south of Fresh Water, and north of Warren Streets.

On this map you will note first the words "King's Farm" and then "Part of it laid out in lots," which should be conclusive that these were the exact boundaries of the King's Farm. It distinctly portrays how far north Chapel and Church Streets extended at that time. It shows the northern boundary of the King's farm, and the northern boundary of the Commons, and if my readers will turn again to the line history of New York, these points of interest, the palisades and Negros' Burying Ground will be easily located.

You will see that this map locates a gate at Broadway, and one at Chapel Street. The shore line (un-named) is Greenwich Street, or as they called it then, the Road to Greenwich.

This map having been produced upon the trial, and having received the approbation of the Vice-Chancellor, was conclusive of the boundaries of the King's Farm.

On page 746 of the opinion, the Vice-Chancellor remarks: that the map was published in 1755, and is frequently referred to in the conveyance of lands in what was then the extreme lower part of the city; that upon this map the King's Farm is laid down as extending from Partition Street (now Fulton) northerly along the Hudson river; and from Partition to Warren Street it is marked as being laid out in blocks. Now mark how deftly the northern boundary was left to the imagination, but that it did extend from Partition street on the south. Note with what caution, deliberation and premeditation he falls in with the design of the church, knowing that a declaration as to the northern boundary described on that map would forever bar the church in its design to seize the property to the north.

Lest at any time this map should be repudiated, as it is by repudiation some of the main points in this matter have been taken care of, I want to impress upon my readers that plate number thirteen specifically states that it is the map which was read on this hearing, and the statement is authenticated by the clerk's initials.

The one redeeming feature to the characterization of this map by the Vice-Chancellor is, that while he does not give you the northern boundary of the farm, he does recognize the palisades, and states that they were one hundred and ten feet north of Warren Street. The historical fact is that the palisades were built in 1704, along the north end of the City, for its protection, and one year before the date of this Queen Anne grant.

Plate number thirty-five is the Lyne map referred to in the opinion of the Vice-Chancellor at pages 745-6 and 750. He states that the "most northwardly street laid down on the map is Windmill Lane, which was midway between the present Courtlandt and Liberty Streets, though lines are drawn as if for a street where Courtlandt street now runs; that King's Farm is laid down as extending along the North River, an undefined distance from a point a little below the present Fulton Street northwardly, beyond the present park, which was then a common."

Having been accepted as authentic by the Vice-Chancellor we would call attention in this case to the southern boundary of the farm starting at a point a little north of Windmill lane, and at a point between the present Courtlandt and Liberty Street. This southern boundary of the King's Farm is only a little matter of about five hundred feet out of the way, but as its northern boundary was made to stretch for several acres, a small matter of a few hundred feet should not call for any caveling.

However, the map does go to the extent of the City at that date, to the line where the palisades were situate. Perhaps Mr. Lyne did not like the palisades and therefore did not line them on his map, but from the historical fact that they were built in 1704, and had existed some twenty-four years before the publication of the Lyne map, it would seem that he probably intended the map to cease at the palisades. However, if one would draw a line straight across from a point where the rope walk ceases, he would come just outside the Old Bowling Green, which on page 750 we are told was leased to one Marshall by Trinity Church. This map therefore avails nothing by way of a positive northern boundary for King's Farm, other than as stated. If we are to take the map for a guide it did stop in line with the commons, and at the Seal of the Mayor Robert Lurting, a vestryman of Trinity Church, the figures on which should look very familiar to Trinity Church even at this day.*

It is ridiculous to try to justify the assumption that the King's Farm went to Christopher Street by anything shown on this map, especially when a later map is invoked in this direction, the Maerschalk map of 1755.

Taking the rope walk as a guide, the north and south line of the commons, the pen line history of this particular spot states that this walk was between Murray and Warren Streets, which would be below a point of the present City Hall.

Plate number thirty-six is the next map referred to by the Vice-Chancellor, page 747. The date of this map is 1767, nine years before the Revolution. You will note that the last street named on this map is Warren Street, and that was south of the palisades. It is hard to understand the reason for introducing these maps, particularly as they one and all terminated the King's farm at the palisades, and could afford no proof of actual possession. They were unnecessary, for the Vice Chancellor has explained, with and by the consent, assistance and co-operation of the plaintiff, who kindly facilitated matters by alleging that Trinity was in possession, for fear it might make trouble to produce any real evidence of anyone inhabiting the Bogardus Farm, other than the Bogardus themselves, until it became apparent that force, coercion, and strong measures, not prescribed by statute, were necessary.

Plate thirty-seven is a map not mentioned in the opinion of the Vice-Chancellor. It represents a survey made in the year 1782. Mark well that Chambers Street is the most northerly street laid out, just one block beyond the last street named on the Lyne map of 1728. Note the location of the City Hospital on this map, and then by referring back to the line history of New York you will find the exact location of that building. This hospital was west of Broadway, which had been extended through the Kalchkhock or Shell Point, the hill lying between Church Street on the west and Lafayette Street on the east.

The history of the extension of Broadway above Chambers Street, and the leveling of Kalckhook is fully detailed in the line history before mentioned. One landmark on this hill is given in Plate Thirty-eight, the old White Conduit House.

Note Greenwich Lane (now Greenwich Street) which was opened shortly before the year 1760, and what was then the high water mark on the shore of the Hudson River. The writer wishes you to bear in mind this high water line, for it has much to do with these renowned leases, which are used as proof of the possession of the Bogardus farm, particularly the Lispenard lease, and the Harrison lease, shown on map plate thirty-six.

Returning again to the Lyne Map of 1728, compare this with the Maerschalk Map, as to the location of the King's

Plate Thirty-eight

Lith. by Geo. Hayward, 120 Water St. N.Y. For D. T. Valentine's Manual for 1856

WHITE CONDUIT HOUSE,
in Leonard St. between Broadway and Church St. N.Y. 1816.
Drawn by J. Evers.

farm, and you will see that the location of this tract on the maps in question are substantially alike.

Now by referring back to plates four and twelve, you will observe that the Bogardus farm was north of the palisades, or north of Chambers Street. This is important to bear in mind when reading the leases in the 4 Sandford case, to locate the various lands leased.

No where in this long detail of leases, for you find any record of any lease to anyone covering lands above Chambers Street, before the year 1750. Hence, if the statute was only twenty-five years, the possession would not have been sufficient to have ripened into a vested right at the time of the revolution, but the Vice-Chancellor tells us that the statute was sixty years in 1705, which was reduced to twenty-five years in the year 1788.

Plate number thirty-nine is an interesting chart map, showing the high water line, and the location of the different farms and estates, published by Valentine in 1852. The accompany key, plates thirty-nine a, b, c, and d, will aid the reader in locating many of the items referred to in the line of history of New York.

The key, number 37, states that Old Jans Land was so called from Anneke Jans. This is a mistake, for number 25 specifically refers to Anneke Jans farm of sixty-two acres, and Valentine in a later history gave the true ownership of this farm, as well as the full name of Old Jans, Jan Celes.

Plate Forty is a plan of the City and environments as they were in the years 1742, 1743, 1744, by D.... G.... This map gives the location of the palisades, and you will note the four gates of the city, one at Pearl Street, one at Chatham Square, one at Broadway, and one at Greenwich Street

Now follow the little index on the map:

Note particularly No. 45 the Rutger farm.

No. 58—Spring Garden,

No. 59—Old Bowling Green,

No. 60—Adam Van Den Berg farm.

We now turn to the question of the leases given by Trinity Church, and recited in this case as evidence of its possession of the Bogardus farm, classifying them into two groups:

1. Those which they assert were given previous to 1715, and which would have matured into a vested right at the time of the revolution.

2. Those they assert were given between 1715 and 1751, which, if the statute was twenty-five years, instead of the sixty, would have matured into a vested right at the time of the revolution.

The number of these leases will astonish you.

Under group one you will, no doubt, observe there is the one lease. See page 649. The lease to George Ryerse, dated January 24th, 1704, of the Queen's farm for a period of five years.

The first lease mentioned in the second group is to Robert Harrison, dated, July 20, 1721, of premises described as King's Farm, excepting six acres leased to W. Lake. Harrison's term of ten years expired, and Cornelius Cozine went into possession, with lease dated May 1st, 1732. The premises are now described as the Church Farm, but the exceptions are the same as in the Harrison lease, with thirty feet for a rope walk for Capt. Degrushe. You will observe this rope walk below the palisades near the corner of Chambers on the Maerschalk maps, plates thirteen, fourteen, and thirty-four.

Next fourteen leases in the year 1750, for lots and parcels of land situate on the southern part of the Church Farm, below Chambers Street. This location fixes the lots as south of the palisades, and no part of the lands included in the Bogardus tract, according to the maps and descriptions given.

Of these fourteen leases special mention is made of one dated February 28th, 1750, to Elias DeGrushe ropemaker, for three lots known as numbers 415, 416, 417 on the map of the Church farm, which lie to the southward of the stockadoes, at the northwest corner of Warren Street and Broadway. No. 417 extends west from Broadway twelve hundred feet; No. 415 extends west of Broadway one hundred and twelve and a half feet; No. 416 extends west of Broadway one hundred and thirteen feet three inches; each lot being in breadth twenty-five feet, and the three lots being bounded southerly, partly by a street on the map called Warren Street, and by other lots on the map not numbered; that said lots are bounded easterly by Broadway.

Now reader you have three lots twenty-five feet each fronting on Broadway, total seventy-five feet. The southern boundary of these lots is Warren Street. Anyone familiar with New York understands that this block between Warren and Chambers Street is two hundred feet. From this description it is evident that this lease never covered any part of the premises known as the Bogardus Farm, and was situated below the Palisades.

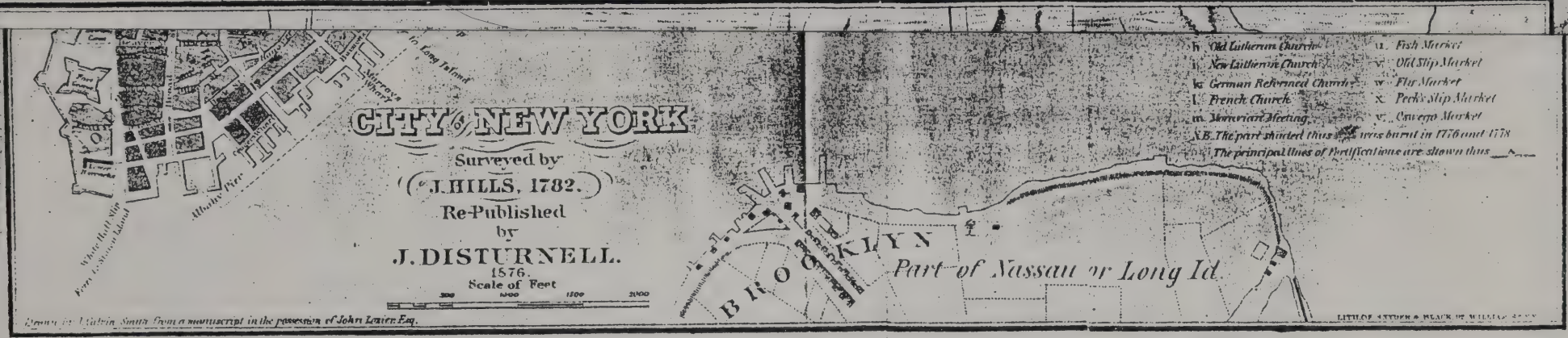
The other lease specifically mentioned as one of the fourteen, is also dated February 28th, 1750, to William Burnham a gardner, for four acres, bounded northerly by lands of Sir Peter Warren, easterly by lands of Elias and Henry Brevoort, southerly by Church land and westerly by the Hudson River. This lease by its description discloses that it was upon property above Canal Street. Why was it brought into this case? The issue over the right to claim Old Jans Land (Jan Celes) was not involved in this case. Leases, paying taxes, and partitions, as we shall subsequently show, was no proof of possession. How did they become so relevant, with possession proven for them by the plaintiff? See plate forty-three.*

Mention is made of seven leases in the year 1751, likewise lots on Murray, Barclay, Church and Vesey Streets, which streets are all situate below the palisades.

This comprised all the leases, down to, and including the year 1751, but I cannot desist mentioning the record made in this case on pages 652-3 in reference to the lease made to Adam Vandenburgh March 5th, 1752, for five years. This is interesting because of the description that it covers the "Church Farm, both in the west and outwards, which lies northward of the stockadoes." Somebody must have forgotten their A. B. C.'s because the westward was below and south of the stockadoes; but even this lease does not prove possession or improvement, for the period of twenty-five years, much less the sixty years, required by the statute before the revolution.

Considering the affidavit of Kooning and Layton, one is irresistibly drawn to the statement in the syllabus of the case of Bogardus against Trinity, that "the recitals in public records, in statutes and legislative journals; the proceedings in courts of justice; and their averments and results; and the depositions of witnesses in suits or legal controversies, are received as evidence of facts to which they relate."

They were both very ancient affidavits at the time they were brought to light. They had been sworn to May the 18th, 1751, before one of the Justices of the Supreme Court, Frederick Phillipse.


CITY of NEW YORK
Surveyed by
J. HILLS, 1782.
Re-Published
by
J. DISTURNELL.
1876.
Scale of Feet
300
600
1200
2000
Albany River
Murray's Wharf
To Long Island
Fort Stirling Island
BROOKLYN
Part of Nassau or Long Id.
h Old Lutheran Church
i New Lutheran Church
k German Reformed Church
l French Church
m Methodist Meeting
u Fish Market
v Old Slip Market
w Fly Market
x Peck's Slip Market
y Catherine Market
N.B. The part shaded thus was burnt in 1776 and 1778
The principal lines of Fortifications are shown thus
Drawn by Valentine Smith from a manuscript in the possession of John Lenox Esq.
LITHOG. STUDER & BLACK 38 WILLIAM STREET

farm, and you will see that the location of this tract on the maps in question are substantially alike.

Now by referring back to plates four and twelve, you will observe that the Bogardus farm was north of the palisades, or north of Chambers Street. This is important to bear in mind when reading the leases in the 4 Sandford case, to locate the various lands leased.

No where in this long detail of leases, for you find any record of any lease to anyone covering lands above Chambers Street, before the year 1750. Hence, if the statute was only twenty-five years, the possession would not have been sufficient to have ripened into a vested right at the time of the revolution, but the Vice-Chancellor tells us that the statute was sixty years in 1705, which was reduced to twenty-five years in the year 1788.

Plate number thirty-nine is an interesting chart map, showing the high water line, and the location of the different farms and estates, published by Valentine in 1852. The accompany key, plates thirty-nine a, b, c, and d, will aid the reader in locating many of the items referred to in the line of history of New York.

The key, number 37, states that Old Jans Land was so called from Anneke Jans. This is a mistake, for number 25 specifically refers to Anneke Jans farm of sixty-two acres, and Valentine in a later history gave the true ownership of this farm, as well as the full name of Old Jans, Jan Celes.

Plate Forty is a plan of the City and environments as they were in the years 1742, 1743, 1744, by D.... G.... This map gives the location of the palisades, and you will note the four gates of the city, one at Pearl Street, one at Chatham Square, one at Broadway, and one at Greenwich Street

Now follow the little index on the map:

Note particularly No. 45 the Rutger farm.

No. 58—Spring Garden,

No. 59—Old Bowling Green,

No. 60—Adam Van Den Berg farm.

We now turn to the question of the leases given by Trinity Church, and recited in this case as evidence of its possession of the Bogardus farm, classifying them into two groups:

1. Those which they assert were given previous to 1715, and which would have matured into a vested right at the time of the revolution.

2. Those they assert were given between 1715 and 1751, which, if the statute was twenty-five years, instead of the sixty, would have matured into a vested right at the time of the revolution.

The number of these leases will astonish you.

Under group one you will, no doubt, observe there is the one lease. See page 649. The lease to George Ryerse, dated January 24th, 1704, of the Queen's farm for a period of five years.

The first lease mentioned in the second group is to Robert Harrison, dated, July 20, 1721, of premises described as King's Farm, excepting six acres leased to W. Lake. Harrison's term of ten years expired, and Cornelius Cozine went into possession, with lease dated May 1st, 1732. The premises are now described as the Church Farm, but the exceptions are the same as in the Harrison lease, with thirty feet for a rope walk for Capt. Degrushe. You will observe this rope walk below the palisades near the corner of Chambers on the Maerschalk maps, plates thirteen, fourteen, and thirty-four.

Next fourteen leases in the year 1750, for lots and parcels of land situate on the southern part of the Church Farm, below Chambers Street. This location fixes the lots as south of the palisades, and no part of the lands included in the Bogardus tract, according to the maps and descriptions given.

Of these fourteen leases special mention is made of one dated February 28th, 1750, to Elias DeGrushe ropemaker, for three lots known as numbers 415, 416, 417 on the map of the Church farm, which lie to the southward of the stockadoes, at the northwest corner of Warren Street and Broadway. No. 417 extends west from Broadway twelve hundred feet; No. 415 extends west of Broadway one hundred and twelve and a half feet; No. 416 extends west of Broadway one hundred and thirteen feet three inches; each lot being in breadth twenty-five feet, and the three lots being bounded southerly, partly by a street on the map called Warren Street, and by other lots on the map not numbered; that said lots are bounded easterly by Broadway.

Now reader you have three lots twenty-five feet each fronting on Broadway, total seventy-five feet. The southern boundary of these lots is Warren Street. Anyone familiar with New York understands that this block between Warren and Chambers Street is two hundred feet. From this description it is evident that this lease never covered any part of the premises known as the Bogardus Farm, and was situated below the Palisades.

The other lease specifically mentioned as one of the fourteen, is also dated February 28th, 1750, to William Burnham a gardner, for four acres, bounded northerly by lands of Sir Peter Warren, easterly by lands of Elias and Henry Brevoort, southerly by Church land and westerly by the Hudson River. This lease by its description discloses that it was upon property above Canal Street. Why was it brought into this case? The issue over the right to claim Old Jans Land (Jan Celes) was not involved in this case. Leases, paying taxes, and partitions, as we shall subsequently show, was no proof of possession. How did they become so relevant, with possession proven for them by the plaintiff? See plate forty-three.*

Mention is made of seven leases in the year 1751, likewise lots on Murray, Barclay, Church and Vesey Streets, which streets are all situate below the palisades.

This comprised all the leases, down to, and including the year 1751, but I cannot desist mentioning the record made in this case on pages 652-3 in reference to the lease made to Adam Vandenburgh March 5th, 1752, for five years. This is interesting because of the description that it covers the "Church Farm, both in the west and outwards, which lies northward of the stockadoes." Somebody must have forgotten their A. B. C.'s because the westward was below and south of the stockadoes; but even this lease does not prove possession or improvement, for the period of twenty-five years, much less the sixty years, required by the statute before the revolution.

Considering the affidavit of Kooning and Layton, one is irresistibly drawn to the statement in the syllabus of the case of Bogardus against Trinity, that "the recitals in public records, in statutes and legislative journals; the proceedings in courts of justice; and their averments and results; and the depositions of witnesses in suits or legal controversies, are received as evidence of facts to which they relate."

They were both very ancient affidavits at the time they were brought to light. They had been sworn to May the 18th, 1751, before one of the Justices of the Supreme Court, Frederick Phillipse.

CITY of NEW YORK
Surveyed by
J. HILLS, 1782.
Re-Published
by
J. DISTURNELL.
1876.
Scale of Feet
Mr. LISPENARD
Mr. MAYARD
Mr. JONES
Mr. RUTGERS
Mr. BYVANK
Jew Burial Ground
Road to Boston
Manhattan Water
Artillery Stores
Powles Hook Ferry
Wallabout Bay
Gowanus Bay
Gowanus Creek
Atlantic River
Peck Slip
Pearl Street
Pearl St. to Long Island
Wharf
Corlaers Hook
EAST RIVER
BROOKLYN
Part of Nassau or Long Id.
References
a. St. Pauls Church
b. St. George's Chapel
c. Old Dutch Church
d. New Dutch Church
e. New Reformed Church
f. Old Presbyterian Meeting
g. New Presbyterian Meeting
h. Old Lutheran Church
i. New Lutheran Church
k. German Reformed Church
l. French Church
m. Moravian Meeting
n. Anabaptists Meeting
o. Methodists Meeting
p. Quakers Meeting
q. Seceders Meeting
r. Jews Synagogue
s. City Hall
t. Exchange
u. Fish Market
v. Old Slip Market
w. Flat Market
x. Peck's slip Market
y. Coenties Market
N.B. The part shinted thus were burnt in 1776 and 1778
The principal lines of Fortifications are shown thus

The line of high-water was the limit of all the estate bounded by the water. All the land under water, between the original high and low-water marks, was granted to the Corporation of the city of New York by the Charter.

1. The walled city of New Amsterdam. The Indian name for the extreme point of the upland was Kap-se, (*Benson.*)

1 *a*. The land lying just without the gates of the city was laid out into town lots, and granted to various persons.

1 *b*. The garden of Peter Stoutenburgh.

1 *c*. The ground of John Van Gue.

2 & 2½. This plot of ground was, at a very early period, appropriated to the use of the English church, and subsequently granted to the church, under the designation of "The Rector and Inhabitants of the city of New York, in communion with the Protestant Episcopal Church of the State of New York." By the charter of May 6, 1697, the church was incorporated by the name of "Rector and Inhabitants of the city of New York of the Protestant Church of England, as by law established." The same religious denomination also acquired the title to "The burial place" lying between No. 2 and a line a little south of Thames street.

3 & 4. A tract of land conveyed to Wm. Dyre, afterward of Thomas Lloyd, and a portion of it, East of Broadway, more recently of Thomas Ellison.

3½. The ground of "Trentzi, the widow of Christopher Hoogland," 1696.

5.

6. Theunis Dey, afterward of Janakie Ryers.

7. The Shoemakers' pasture, (the Dutch Church property is comprised in this tract.)

8. Vandercliff's land.

9.

10. Beekman's Pasture.

11. The Common.

11 *a*. "The Vineyard."

11 *b*. Waste land granted to Corporation of New York, by its charter—part of the Common.

12. The King's Farm, granted to the Episcopal church, by letters patent from Queen Anne, 22d November, 1705.

12½. The Negro burying ground, or "Teller's property."

13. Estate of Governor Jacob Leisler, forfeited in 1691, upon conviction of his attainder, and afterward restored to his heirs by the act of Parliament, reversing the attainder.

14. Greppel Bosch, anglice, a swamp or marsh covered with wood, to this day called "The Swamp."

15. Granted to various persons in lots, by patents.

16. Cherry Garden, formerly the property of Richard Sackett. This gentleman, or one of his family, afterward "located" on Lake Ontario, and gave name to the village of Sackett's Harbor.

17. Webber & Loockerman's patent, called also "The Roosevelt farm."

18. The Janeway estate.

19. Kolk Hook.

20. Kolk, anglice, the deep, or the unfathomed; corrupted into Collect, also known as Verseh water, or fresh water.

20 *a*. Powder house lot.

21. Pond south of the powder house, called "the Little Kolch."

22. John Kingston's estate.

23. Dover estate.

24. Delancey.

25. The Dominies' Hock, a tract of land over sixty-two acres, known also as the Dominies' Bouwerrie, was acquired by a ground brief from Governor Stuyvesant, bearing date July 4, 1654, confirmed by Governor R. Nichols, 27 March, 1667, and was conveyed by the "children and lawful heirs of Armetie Rolofs, late widow Dom'is Bogardus, to the Rt. H'ble Coll Francis Lovelace, and was afterward granted to the English Church. The Church also claims this as part of their grant from Queen Anne.

26. Lispenard meadows.

27. Rutgers farm.

28.

29. Governeur's estate.

30. Ives' estate.

31. Byvanck estate.

32. Delancey.

33. Stoutenburgh.

34.

34 *a*. The land on the westerly side of Pearl street, extending to Grepel Bosch, between Ferry and Rose streets, belonging to Belthazar Bayard, and was conveyed by him, in 1683 to Theophilus Elsworth. In 1741, it was divided into three parts, one of which was set off in severalty to Geesie, widow of Hendrick Vandewater, one other to Theophilus Elsworth, and the other to Margrittie, the widow of Johannes Clopper.

35 *a b*. Delancey's east and west farms. This estate was forfeited to the people by the attainder of Chief Justice James Delancey, during the war of the American Revolution, laid out into city lots, and conveyed by the Commissioners of Forfeitures.

36. Bayard's west and east farms.

37. Old Jan's land, so called from Aneke Jans, afterward belonging to the English Church.

38. The farm of Elbert Herring.

38 *a d*.

39. Bleecker's estate.

40. Alderman Dyckman's estate.

41. Tucker.

42. Van Cortland.

43. The Laendert farm, (so called from Laendert Arenden, one of the early proprieters.)

44. Brown and Eckford.

45 Abijah Hammond.

46. Brown & Eckford.

47. The Minthorne farm.

48. P. Stuyvesant.

49. Morgan Lewis, John Flack and others.

50. P. Stuyvesant.

51. Stuyvesant.

52. Stuyvesant, Peter's field.

53.

54.

55. Belonging to the Sailor's Snug Harbor.

56. The Bevoort estate.

57. The Spingler estate.

58. Thomas Burling.

59. Samuel Barling, afterward Cowman.

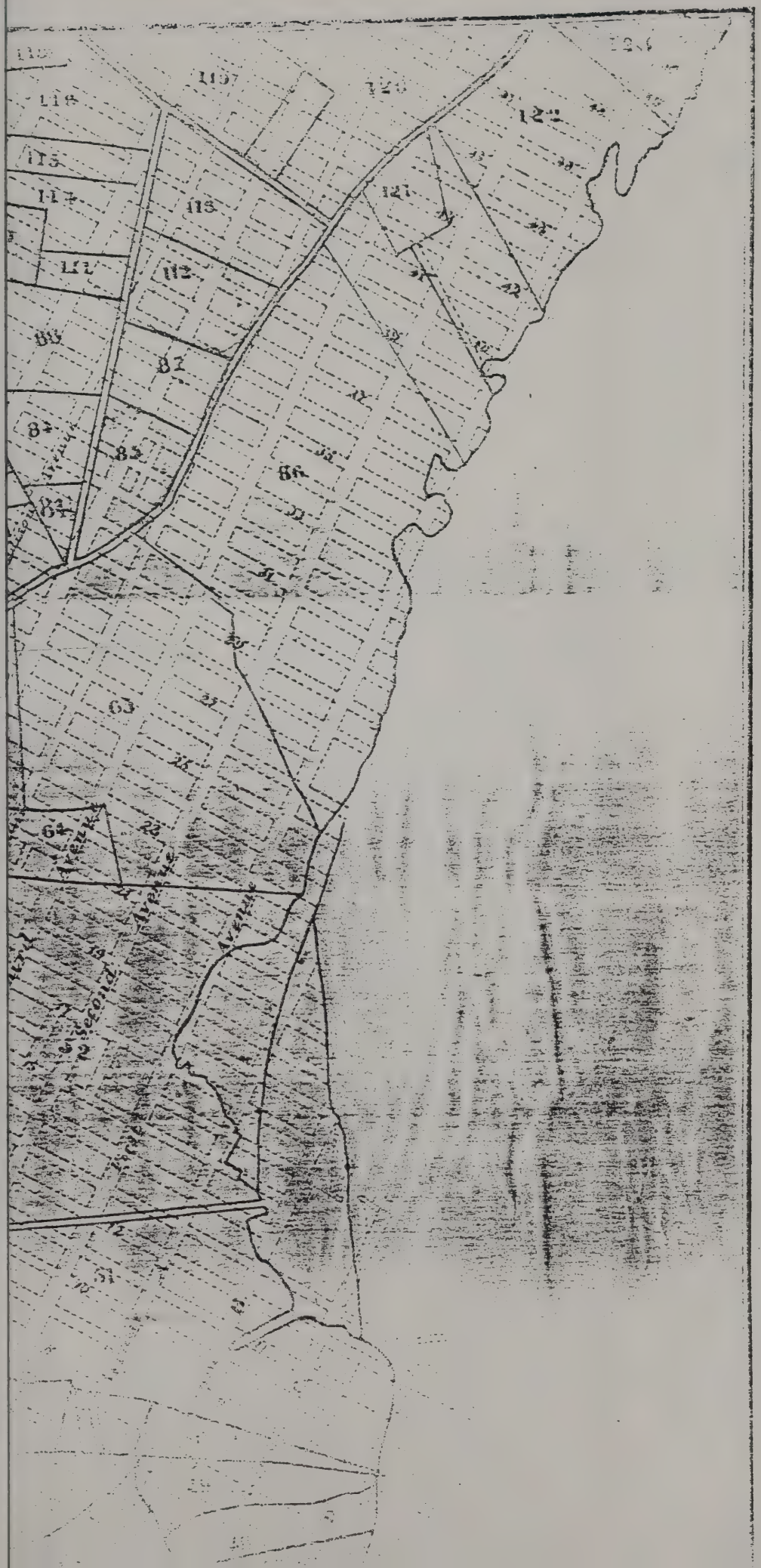
60. Samuel and Thomas Burling, afterward Cowman.

TRINITY
BREAK YE MY COMMANDMENTS?

61. Samuel and Thomas Burling.
62. Anderson's place.
63. Tiebout Williams.
64. Krom Messie—so called from the resemblance of its outlines to the shape of a shoemaker's cutting knife, since corrupted into "Grammercy," by which name the small inclosure or "Park" within its limits is still known.
65. Rose Hill farm.
66. Estate of John Watts.
67. The estate of Sir Peter Warren, called Greenwich, "The Indian name, according to Benson, of the point of land extending into the Hudson, was Sapokanigan."
67 *a*. Isaac Varian's estate.
67 *b*. Gilbert Coutant.
67 *c*. Estate of Ireland.
67 *d*. Estate of George Clinton and J. J. Astor, called "Greenwich place."
68. Estate, formerly Yellis Manderville, afterward the property of George Clinton and John Jacob Astor.
69. Part of the estate of Yellis Mandeville, conveyed to John Staples.
70. Part of the estate of Yellis Manderville, conveyed to Rem Rapelye.
71. Part of the estate of Yellis Manderville, conveyed to Samuel Boyd.
72. Part of the estate of Yellis Manderville, conveyed to Bishop Moore.
73. Estate of Bishop Moore, late of Dr. Clement C. Moore.
74. Clarke estate.
75. Bosson Bouwerie, or, more properly, Bosch Bouwerie (woodland) formerly (1705) the property of Elbert Hereman, all west of Seventh avenue belonged latterly to the estate of Henry Eckford.
76. Known as the "Horn estate," originally patented (1670) by Sir Edmond Andross to Solomon Peters, a free negro, whose widow and heirs conveyed it to John Horn and Cornelius Webber, and held by Horn's descendants until a very recent date.
77. Formerly the estate of Isaac Varian, the northerly 17½ acres purchased by him from the executors of John De Witt, to whom the same was conveyed to Jacob Horn in 1751; the southerly 10 acres purchased from Adam Vanderburgh.
78. Estate of Samuel Franklin. All the lands marked 78 and 80, 81, 82, 83 and 88, formerly belonging to Franklin & Robinson, eminent merchants, some 50 years ago.
79.
80. Casper Samler, who also owned 81, 82, 83 and 84½.
81. Isaac Cross and others.
82. Coulthard.
83. Anderson & Grenseback.
84.
84½. Samler.
85.
86. Kip's Bay farm.
87. Murray Hill estate.
88. Estate of John Thompson.
89. John Slidell (formerly President of Mechanics Bank.)
90. Richard Dikeman and others.
91. Samuel Van Norden.
92. Estate of James A. Stewart. Stewart street divided it in the centre, running westerly from Bloomingdale road, parallel with the northerly and southerly boundary lines of this tract. That part of this tract formerly

fronting on Broadway, together with Nos. 97, 98 and 99, formed the farm of Peter Van Ordens; that part lying on Fitz Roy Road, was part of Jacob Orden's farm.
93. John Slidell.
94. Henry Jackson.
95. Peter Hattereck (97, 93 and 99 and 107, 108 and 181, were formerly part of the estate of Wessel Van Norden.)
96. Aycrigg.
96½. Shute.
97. Freeman.
98. Arden estate.
98½. Estate of Citizen Genet.
99. Estate of Cornelius Ray.
100. Estate of Richard Harrison, Esq., a distinguished lawyer some 50 years since, late the property of the Hon. David S. Jones, now deceased.
101. The property formerly of Decatur, now, or late of James Boorman, Esq.
102. Late of George C. Schroepel.
103. Formerly of Thomas Tibbet Warner, afterward of Rem Rapelye.
103 *a*. Late of Samuel Watkins.
103 *b*. Late of Isaac Moses.
103 *c*. Late of the Chemical Bank.
104. Estate of I. Moses.
105. Codman.
106. John B. Murray.
107. Glass house farm. Estate of George Rapelye, formerly belonging to Sir Peter Warren; at the northerly boundary line was the Great Kill, so called.
108. Samuel L. Norton.
109. James Boggs.
110. Ineleberg.
111. "Grange," the country seat of John Murray, jr.
112. Murray Hill estate.
113.
114. "Ogden Place farm," partitioned, in 1838, among heirs of Wm. Ogden; formerly part of New York Commons.
115.
116. Ineleburgh.
117.
118.
119.
120. Estate of Thomas Buchanan.
121. Casper Smith estate.
122. Turtle Bay farm, "formerly belonging to the Winthrops, the small cove or bay, called formerly "Deutel Bay," from which the present name is corrupted. "*When the head of the cask was further secured with pegs, they could say the cask was 'ge deutelt;' the pegs were short, but at the base broad; the bay narrow at its entrance, broad at the bottom; the supposed resemblance between the bay and the peg, the supposed origin of the name.*"
123.

TRINITY
BREAK YE MY COMMANDMENTS?

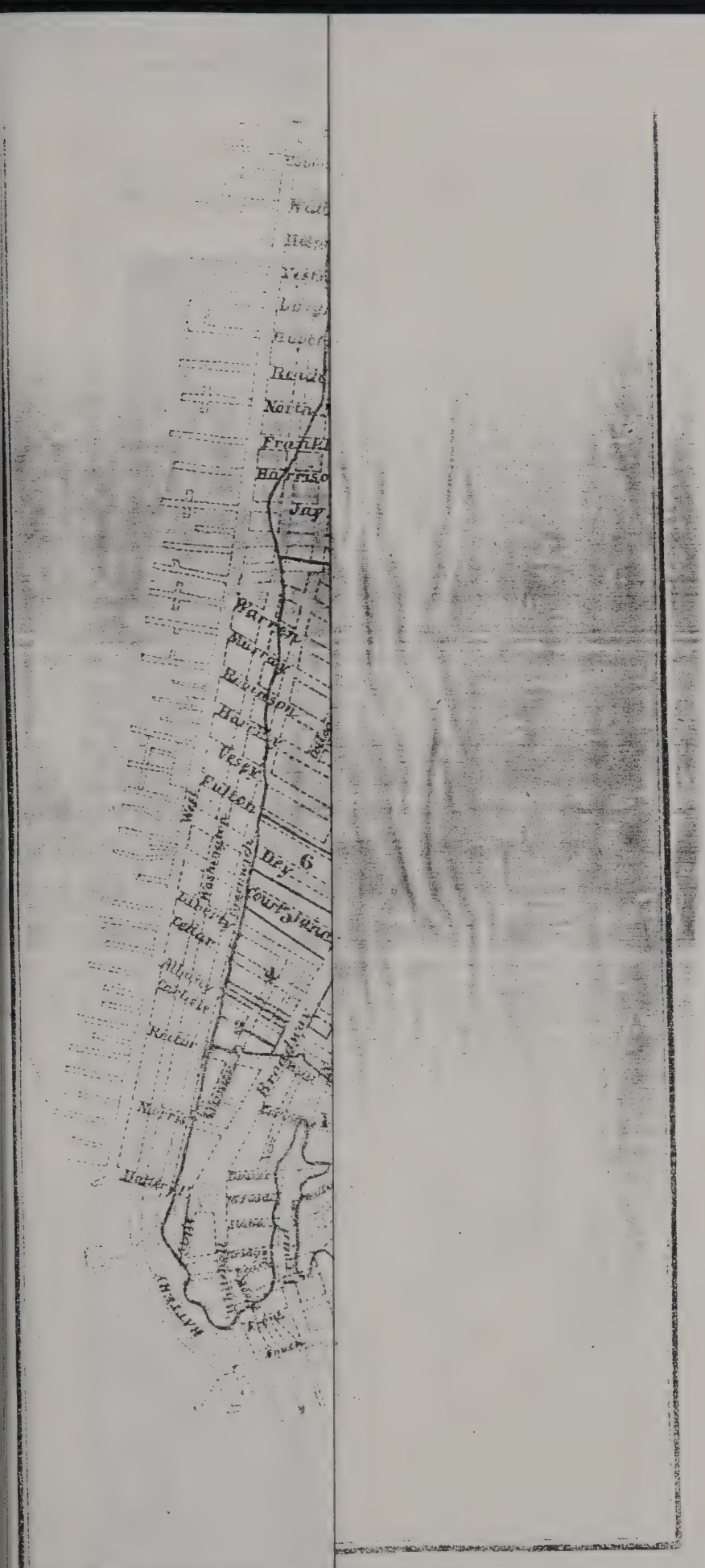

Second Avenue

61. Samuel and Thomas Burling.
62. Anderson's place.
63. Tiebout Williams.
64. Krom Messie—so called from the resemblance of its outlines to the shape of a shoemaker's cutting knife, since corrupted into "Grammercy," by which name the small inclosure or "Park" within its limits is still known.
65. Rose Hill farm.
66. Estate of John Watts.
67. The estate of Sir Peter Warren, called Greenwich, "The Indian name, according to Benson, of the point of land extending into the Hudson, was Sapokanigan."
67 *a*. Isaac Varian's estate.
67 *b*. Gilbert Coutant.
67 *c*. Estate of Ireland.
67 *d*. Estate of George Clinton and J. J. Astor, called "Greenwich place."
68. Estate, formerly Yellis Manderville, afterward the property of George Clinton and John Jacob Astor.
69. Part of the estate of Yellis Mandeville, conveyed to John Staples.
70. Part of the estate of Yellis Manderville, conveyed to Rem Rapelye.
71. Part of the estate of Yellis Manderville, conveyed to Samuel Boyd.
72. Part of the estate of Yellis Manderville, conveyed to Bishop Moore.
73. Estate of Bishop Moore, late of Dr. Clement C. Moore.
74. Clarke estate.
75. Bosson Bouwerie, or, more properly, Bosch Bouwerie (woodland) formerly (1705) the property of Elbert Hereman, all west of Seventh avenue belonged latterly to the estate of Henry Eckford.
76. Known as the "Horn estate," originally patented (1670) by Sir Edmond Andross to Solomon Peters, a free negro, whose widow and heirs conveyed it to John Horn and Cornelius Webber, and held by Horn's descendants until a very recent date.
77. Formerly the estate of Isaac Varian, the northerly 17½ acres purchased by him from the executors of John De Witt, to whom the same was conveyed to Jacob Horn in 1751; the southerly 10 acres purchased from Adam Vanderburgh.
78. Estate of Samuel Franklin. All the lands marked 78 and 80, 81, 82, 83 and 88, formerly belonging to Franklin & Robinson, eminent merchants, some 50 years ago.
79.
80. Casper Samler, who also owned 81, 82, 83 and 84½.
81. Isaac Cross and others.
82. Coulthard.
83. Anderson & Grenseback.
84.
84½. Samler.
85.
86. Kip's Bay farm.
87. Murray Hill estate.
88. Estate of John Thompson.
89. John Slidell (formerly President of Mechanics Bank.)
90. Richard Dikeman and others.
91. Samuel Van Norden.
92. Estate of James A. Stewart. Stewart street divided it in the centre, running westerly from Bloomingdale road, parallel with the northerly and southerly boundary lines of this tract. That part of this tract formerly

fronting on Broadway, together with Nos. 97, 98 and 99, formed the farm of Peter Van Ordens; that part lying on Fitz Roy Road, was part of Jacob Orden's farm.
93. John Slidell.
94. Henry Jackson.
95. Peter Hattereck (97, 93 and 99 and 107, 108 and 181, were formerly part of the estate of Wessel Van Norden.)
96. Aycrigg.
96½. Shute.
97. Freeman.
98. Arden estate.
98½. Estate of Citizen Genet.
99. Estate of Cornelius Ray.
100. Estate of Richard Harrison, Esq., a distinguished lawyer some 50 years since, late the property of the Hon. David S. Jones, now deceased.
101. The property formerly of Decatur, now, or late of James Boorman, Esq.
102. Late of George C. Schroepel.
103. Formerly of Thomas Tibbet Warner, afterward of Rem Rapelye.
103 *a*. Late of Samuel Watkins.
103 *b*. Late of Isaac Moses.
103 *c*. Late of the Chemical Bank.
104. Estate of I. Moses.
105. Codman.
106. John B. Murray.
107. Glass house farm. Estate of George Rapelye, formerly belonging to Sir Peter Warren; at the northerly boundary line was the Great Kill, so called.
108. Samuel L. Norton.
109. James Boggs.
110. Incleberg.
111. "Grange," the country seat of John Murray, jr.
112. Murray Hill estate.
113.
114. "Ogden Place farm," partitioned, in 1838, among heirs of Wm. Ogden; formerly part of New York Commons.
115.
116. Incleburgh.
117.
118.
119.
120. Estate of Thomas Buchanan.
121. Casper Smith estate.
122. Turtle Bay farm, "formerly belonging to the Winthrops, the small cove or bay, called formerly "Deutel Bay," from which the present name is corrupted. "*When the head of the cask was further secured with pegs, they could say the cask was 'ge deutelt;' the pegs were short, but at the base broad; the bay narrow at its entrance, broad at the bottom; the supposed resemblance between the bay and the peg, the supposed origin of the name.*"
123.

TRINITY BREAK YE MY COMMANDMENTS?

Fitz Roy Road
Alnwick Road
Great Kity Road
Southampton Road
Minetta Water
Reserve
Second Avenue


Fulton
Dey
6
Liberty
Cedar
Albany
Rector
Morris
Harrison
Jay
Murray
Robinson
Harry
Vesey
Washington
Broadway

North Moore
Franklin
Harrison
Jay
Varick
Hudson
Fulton
Dey
Cortlandt
Leonard
Anthony
Broadway
Chambers
Chatham
Mulberry
Mott
Elizabeth
Bowery
East Broadway
Henry
Madison
Monroe
Cherry
Water
South
Front
Catherine
Market
Division
Grand
Canal
Pearl
Rivington
Stanton
Houston
Delancey
Essex
Avenue A
Avenue B
Avenue C
Avenue D
Avenue E
Avenue F
Avenue G
Avenue H
Avenue I
Avenue J
Avenue K
Avenue L
Avenue M
Avenue N
Avenue O
Avenue P
Avenue Q
Avenue R
Avenue S
Avenue T
Avenue U
Avenue V
Avenue W
Avenue X
Avenue Y
Avenue Z

Plate Forty-three

Broadway actually was in a remote and obscure part of the town. Below Crown (Liberty) Street dwelling-houses had been erected, of which a few near the Bowling Green were prodigiously fine; but north of Crown Street all the west side of Broadway was open fields. This unimproved region, beginning at the present Fulton Street and thence extending northward, was the Church Farm.*

The farm-house pertaining to this farm—standing very nearly upon the site of the present Astor

House—is shown on Lyne's map, immediately to the south of the Broadway rope-walk. Later it became a tavern of some celebrity—the Drovers' Inn, kept by Adam Vanderberg. Undoubtedly, the church ownership of this large parcel of land tended to delay its utilization for building purposes, and so helped to retard the extension of the city on the line of Broadway. Even in those early days the strongly American desire to build on land owned in fee operated against the use of leasehold property. Not until the need for the

TO BE SOLD,
AT Vendue, on Tuesday the 12th inst, at the House of Mr John Williams, near Mr Lispenard's: A Lease from Trinity Church, for Old John's Land, for 12 Years to come.

ADVERTISEMENT, 1766

Church Farm became pressing was it taken for improvement on the only terms upon which it could be acquired.

Maerschalck's map (1755) shows that by the middle of the last century the growth of the city, creating this pressing need, had warranted the laying out of streets through the southern portion of the Church property, and that five-and-twenty buildings had been erected between the present Liberty Street and the palisade. But the stronger tendency of growth, it will be observed,

still was toward the northeast. This was, in fact, the line of least resistance. Advance up the middle of the island was blocked by the Fresh Water pond, and up the western side it was impeded by the marshy valley known as Lispenard's Meadows; through the midst of which, on the line of the present Canal Street, was the artificial drain from the Fresh Water to the North River. Before this low-lying region was reached, the obstacle caused by the leaseholds was encountered. Finally, the base-line of west-side development, an extension of Broadway, was but a lane leading to cow pastures and stopping frankly, not far from the present Leonard Street, at a set of bars. Not until the road, now Greenwich Street, leading to Greenwich Village was opened (at an uncertain date, anterior to 1760) was there any thoroughfare on the western side of the island. The only life in this isolated suburb, therefore, was that of its few inhabitants: who dwelt here for economy's sake, far removed from the agreeable activities of the town.

On the eastern side of the island all was energy and go. Here were centred all the important business interests, and the base-line for farther development was the Boston Post Road—a blithe and bustling highway, along which ebbed and flowed constantly a strong tide of travel between the city and its dependent villages and the populous region lying inland from Long Island Sound. Upon this highway—called in its lower reaches the Bowery Lane, because of the farms or *bouer-*

Robert Harrison testified that he found them among the muniments of the church.

In these affidavits Kooning deposed that he was eighty-one years of age at the time, and Mary Layton deposed that she was eighty-four, making them born in 1670 and 1667 respectively.

There then appears a very strange statement "That they knew and remembered the tract of land called the "Church Farm" or the "King's Farm for seventy years then past.

This would take them back to the year 1681.

The old Company's-Dukes's farm was not rechristened until the Duke of York became King in 1685. Trinity received its charter from Governor Fletcher in 1697, and it will not be claimed that there was a Church farm before the church came into being.

These affidavits would rather appear to be a fitting sequel to the Lovelace transcript. These things always set me to wondering why, if everything was all well and happy with this Queen Anne grant, and if it did cover everything coveted or desired on the Island of Manhattan, it was necessary to produce such records to prove the possession. That the judge was not gifted with an analytical mind, give the gods thanks Trinity, for this is not the only episode which points clearly to the facts that someone slipped when endeavoring to lend a helping hand towards the acquisition of the coveted spot, the Bogardus farm.

Kooning and Mary Layton further depose and say, that some sixty-five or seventy years previous, one Dirck Seeker, otherwise called Dirck Dey, lived in the old thatched house, near the place where Adam Vandenburgh then lived.

The known location of the thatched house, corner of Vesey Street and Broadway, which was later the site of the Astor House, establishes more proof of the boundaries of the farm in question; for the case tells us that Seekers received a lease of Duke's farm from Governor Andros, therefore Seekers' lease was limited to the boundaries of the Duke's Farm, which was nothing more or less than the old Company's farm.

The affidavits then go on to state that when Dirck Seekers died, his widow took possession of the farm, and after she died, her son Tunis Dey possessed the farm up to the time of his death; that his widow married Joris Ryerse;

that Joris Ryerse left the farm, when his brother Ryer Ryerse lived on it for a while, and then came Francis Ryerse, and then one Harrison, then one John Balen, then Cornelius Cozine, and then Adam Vandenburgh the present tenant.

All of which goes to prove that all these tenants were on the same property, on the same farm, no more and no less, than that occupied by Dirck Seekers, the Duke's farm.

Should there be any doubt in your mind, even now, as to the northern and southern boundary of the King's Farm, glance again through the following lines, which are the same as given in the previous line history of New York, and you will note that the same names mentioned in the affidavits of Kooning and Mary Layton, as to the occupants of the King's farm, are given here, furnishing abundant proof that Kooning, Mary and Valentine, the clerk of the Common Council are describing one and the same piece of property as the King's Farm, and that it is no more, and no less, than the old Duke's or Company's farm:

Broadway, From Vesey Street to Duane Street.

This part of Broadway was first surveyed in 1760, by Mr. Marschalk, a city surveyor, who then produced to the city authorities "a draft of a road he had lately laid out by order of the Corporation, beginning at the Spring Garden House, where the street is eighty-two feet six inches wide, and extending thence north, 37°, east 30 m., until it comes to the ground of the late widow Rutgers. leaving the street there of fifty feet wide," which is approved and ordered to be recorded. The street was called Great George street, which it retained about thirty years.

On the west side of the street lay the Church farm, and on the east the Commons and the negroes' burial-ground.

The Church farm extended in length from Fulton street to near Duane street, and in width from the street, as now established, to the North river shore. It was originally set apart by the Dutch West India Company to be tilled for the uses of their public officers and the garrison in the fort. On the conquest by the English, it was held as the property of the conquerors, and called the King's Farm. In 1705, Lord Cornbury, then Governor, in his zeal for the encouragement of the Established Church, granted this valuable estate to the corporation of Trinity Church.

At about the same time with the opening of Broadway, the Church had the farm divided off into streets and lots, and made cession of the former to the city authorities. These side streets still remain nor, except in the instance of Park place, which was originally called Robinson street, have their names been altered.

The old farm house, attached to the King's farm, stood upon the site of the present Astor House. The various tenants, so far as we have been able to discover them, were successively, John Ryerson, Francis Ryerson, Mr. Harrison, Mr. Balm, Cornelius Cozine, and Adam Vandenberg. The house was long kept as a tavern by Adam Vandenberg, and known as the Drovers' Inn. In connection with the tavern business, were also a public garden and place of amusement. In 1752, Mr. Dugee advertises that he performs on the wire and slack-rope, at a new house built for that purpose, in Mr. Adam Vandenberg's garden. In December 6, 1747, Cornelius Vandenberg notified the public that he designed to set out as Albany post, for the first time in that winter, on the Thursday following. All letters to go by him to be sent to the Post-office, or to his house near the Spring Garden. Vandenberg was still in the occupation of these premises at a period close on the time of the Revolution, as we find from a liberty pole being erected opposite his house, "where the two roads meet."

The first lease from Trinity Church of property along Broadway which is found recorded, bears date in 1760, and was for four lots on the southwest corner of Murray street; the lessees were Bell & Brookman, carpenters, the term, twenty-one years, and the rental eight pounds pr annum.

Leases, Payment of Taxes, Partitioning

Mention has been made of the fact that leasing, paying taxes, partitioning, are no evidence of possession, but at most can serve only to establish that the party claimed title.

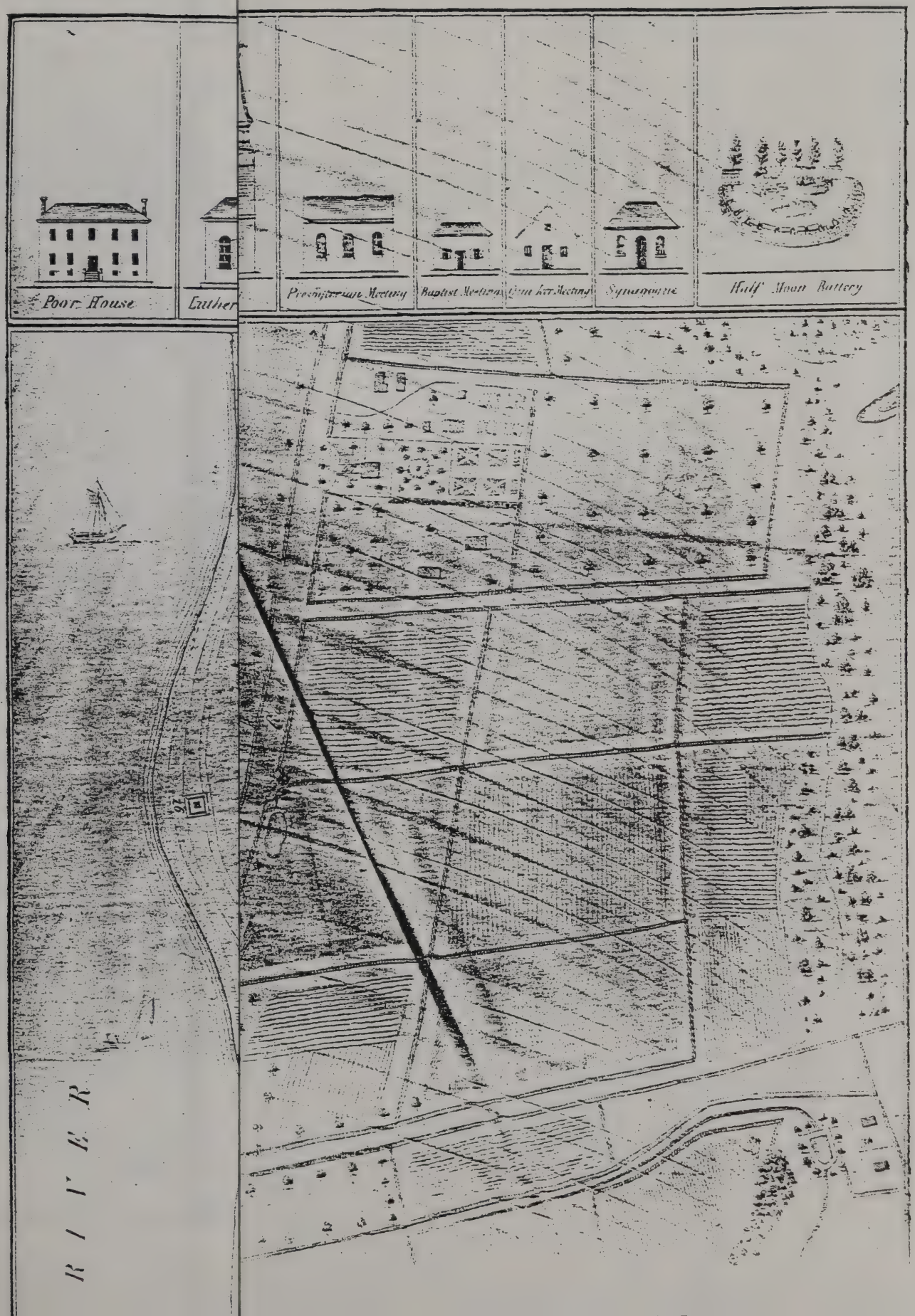
The following excerpts are interesting from an historical as well as a legal viewpoint.

Jackson v. Gilchrist, 15 Johns. 91.

By the charter of liberties and privileges granted by the proprietary government, or the Duke of York, passed October 30, 1683, and which was the Magna Charta of the inhabitants of the province, it is declared, "that no man, of what estate or condition soever, shall be put out of his lands or tenements, nor taken, nor imprisoned, nor disinherited, nor banished, nor any ways destroyed without being brought to answer by due course of law." It also declares, "That no estate of a feme covert shall be sold or conveyed but by deed acknowledged by her in some court of Record, the woman being secretly examined, if she doth it freely, without threats of compulsion of her husband. (See 2 N. R. L. Appendix III, IV. V.) It contains the principle of the English Magna Charta, and of the bill of rights of the people of this state, that no person shall be disseised of his freehold, etc., but by the lawful judgment of his peers or due process of law. (1 N. R. L. 45.) The Magna Charta of England is a limitation of the powers of the British Parliament; and a colonial legislature, which could make no laws repugnant to the laws of England, nor claim that omnipotence which is said to belong to parliament, could not make a law in violation of this great charter of rights. (1 Bl. Com. 138, 139.) The act, therefore, was void, as contrary to the laws of England. In the case of Gardner v. The Trustees of the Village of Newburgh (2 Johns. Ch. Rep. 162), the chancellor held that the legislature could not take away private property, even for necessary public purposes, without providing a fair compensation to the owner; and he cites numerous authorities in support of this doctrine, from books of jurists, and the codes and constitutions of the different countries. This Court has, also, in several cases, recognized the same doctrine. (Jackson v. Catlin, 2 Johns, Rep. 248, 263. Dash v. VanKleek, 7 Johns. Rep. 477, 508. Catlin v. Jackson ex demm in Error 8 Johns. Rep. 520, 539, 556).

* * * * * * * * * *

It will be said, perhaps, that there is a presumption arising from lapse of time that the right of Ann Bridges, has been extinguished. But the case affords no evidence of any acts or facts which can authorize this presumption. From mere silence or inaction no inference can be drawn, or presumption raised, of the extinguishment of right, for a time short of the period of the statute of limitations. No matter how many conveyances there may be, or through how many hands the land may have passed; the presumption cannot avail, unless possession accompanies the claim of right. A presumption from mere length of time to support a right, is very different from a presumption to defeat a right. (Phillips L. of Ev. 117, 118-24. 10 Johns Rep. 377. 7 Johns. Rep. 5. 1 Caines, 84. 6 Binney's Rep. 416. 10 Mass, Rep. 105. 5 Cranch, 262). There can be no adverse


Poor House
Luther
Presbyterian Meeting
Baptist Meeting
Synagogue
Half Moon Battery
RIVER

that Joris Ryerse left the farm, when his brother Ryer Ryerse lived on it for a while, and then came Francis Ryerse, and then one Harrison, then one John Balen, then Cornelius Cozine, and then Adam Vandenburgh the present tenant.

All of which goes to prove that all these tenants were on the same property, on the same farm, no more and no less, than that occupied by Dirck Seekers, the Duke's farm.

Should there be any doubt in your mind, even now, as to the northern and southern boundary of the King's Farm, glance again through the following lines, which are the same as given in the previous line history of New York, and you will note that the same names mentioned in the affidavits of Kooning and Mary Layton, as to the occupants of the King's farm, are given here, furnishing abundant proof that Kooning, Mary and Valentine, the clerk of the Common Council are describing one and the same piece of property as the King's Farm, and that it is no more, and no less, than the old Duke's or Company's farm:

Broadway, From Vesey Street to Duane Street.

This part of Broadway was first surveyed in 1760, by Mr. Marschalk, a city surveyor, who then produced to the city authorities "a draft of a road he had lately laid out by order of the Corporation, beginning at the Spring Garden House, where the street is eighty-two feet six inches wide, and extending thence north, 37°, east 30 m., until it comes to the ground of the late widow Rutgers. leaving the street there of fifty feet wide," which is approved and ordered to be recorded. The street was called Great George street, which it retained about thirty years.

On the west side of the street lay the Church farm, and on the east the Commons and the negroes' burial-ground.

The Church farm extended in length from Fulton street to near Duane street, and in width from the street, as now established, to the North river shore. It was originally set apart by the Dutch West India Company to be tilled for the uses of their public officers and the garrison in the fort. On the conquest by the English, it was held as the property of the conquerors, and called the King's Farm. In 1705, Lord Cornbury, then Governor, in his zeal for the encouragement of the Established Church, granted this valuable estate to the corporation of Trinity Church.

At about the same time with the opening of Broadway, the Church had the farm divided off into streets and lots, and made cession of the former to the city authorities. These side streets still remain nor, except in the instance of Park place, which was originally called Robinson street, have their names been altered.

The old farm house, attached to the King's farm, stood upon the site of the present Astor House. The various tenants, so far as we have been able to discover them, were successively, John Ryerson, Francis Ryerson, Mr. Harrison, Mr. Balm, Cornelius Cozine, and Adam Vandenberg. The house was long kept as a tavern by Adam Vandenberg, and known as the Drovers' Inn. In connection with the tavern business, were also a public garden and place of amusement. In 1752, Mr. Dugee advertises that he performs on the wire and slack-rope, at a new house built for that purpose, in Mr. Adam Vandenberg's garden. In December 6, 1747, Cornelius Vandenberg notified the public that he designed to set out as Albany post, for the first time in that winter, on the Thursday following. All letters to go by him to be sent to the Post-office, or to his house near the Spring Garden. Vandenberg was still in the occupation of these premises at a period close on the time of the Revolution, as we find from a liberty pole being erected opposite his house, "where the two roads meet."

The first lease from Trinity Church of property along Broadway which is found recorded, bears date in 1760, and was for four lots on the southwest corner of Murray street; the lessees were Bell & Brookman, carpenters, the term, twenty-one years, and the rental eight pounds pr annum.

Leases, Payment of Taxes, Partitioning

Mention has been made of the fact that leasing, paying taxes, partitioning, are no evidence of possession, but at most can serve only to establish that the party claimed title.

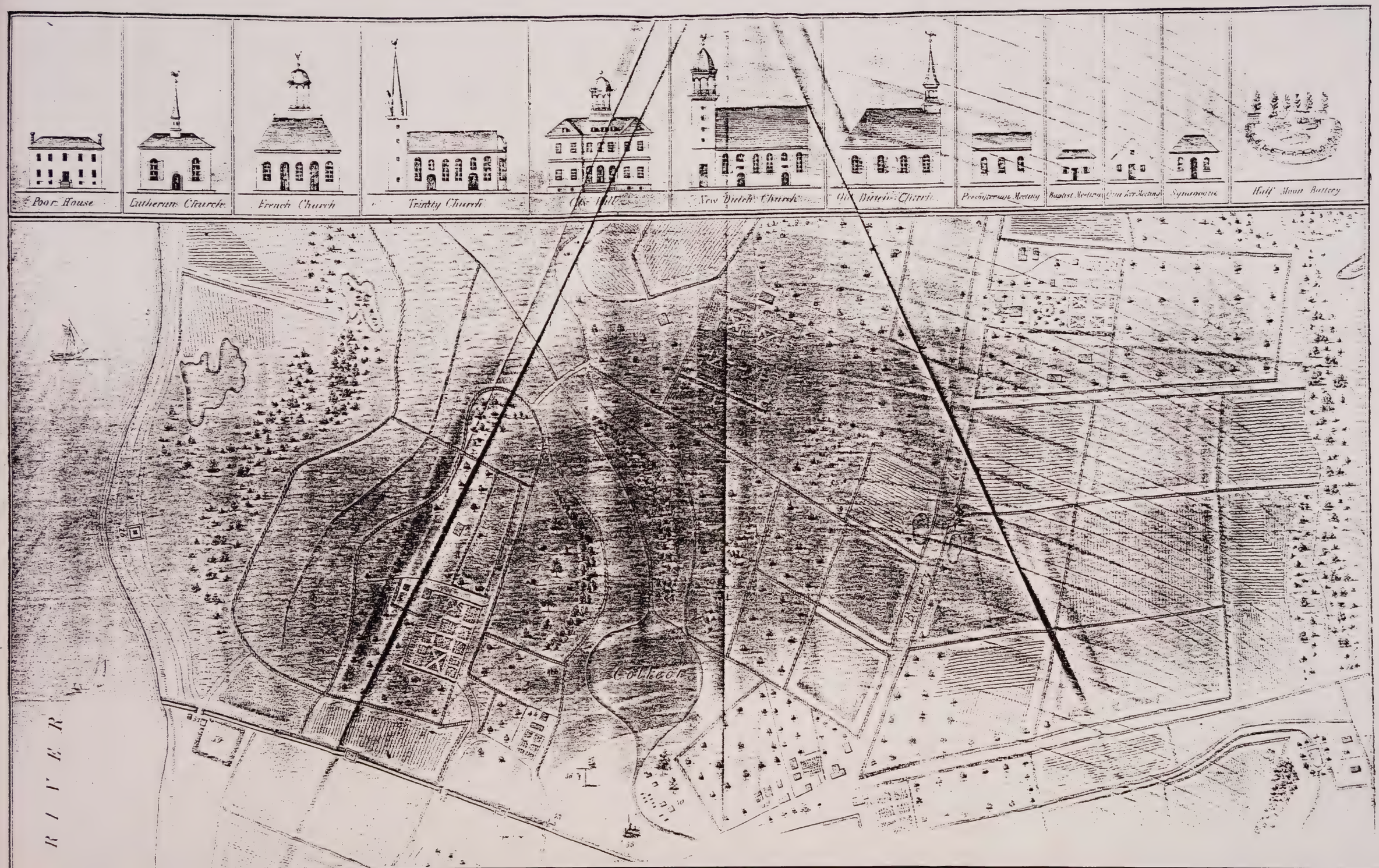
The following excerpts are interesting from an historical as well as a legal viewpoint.

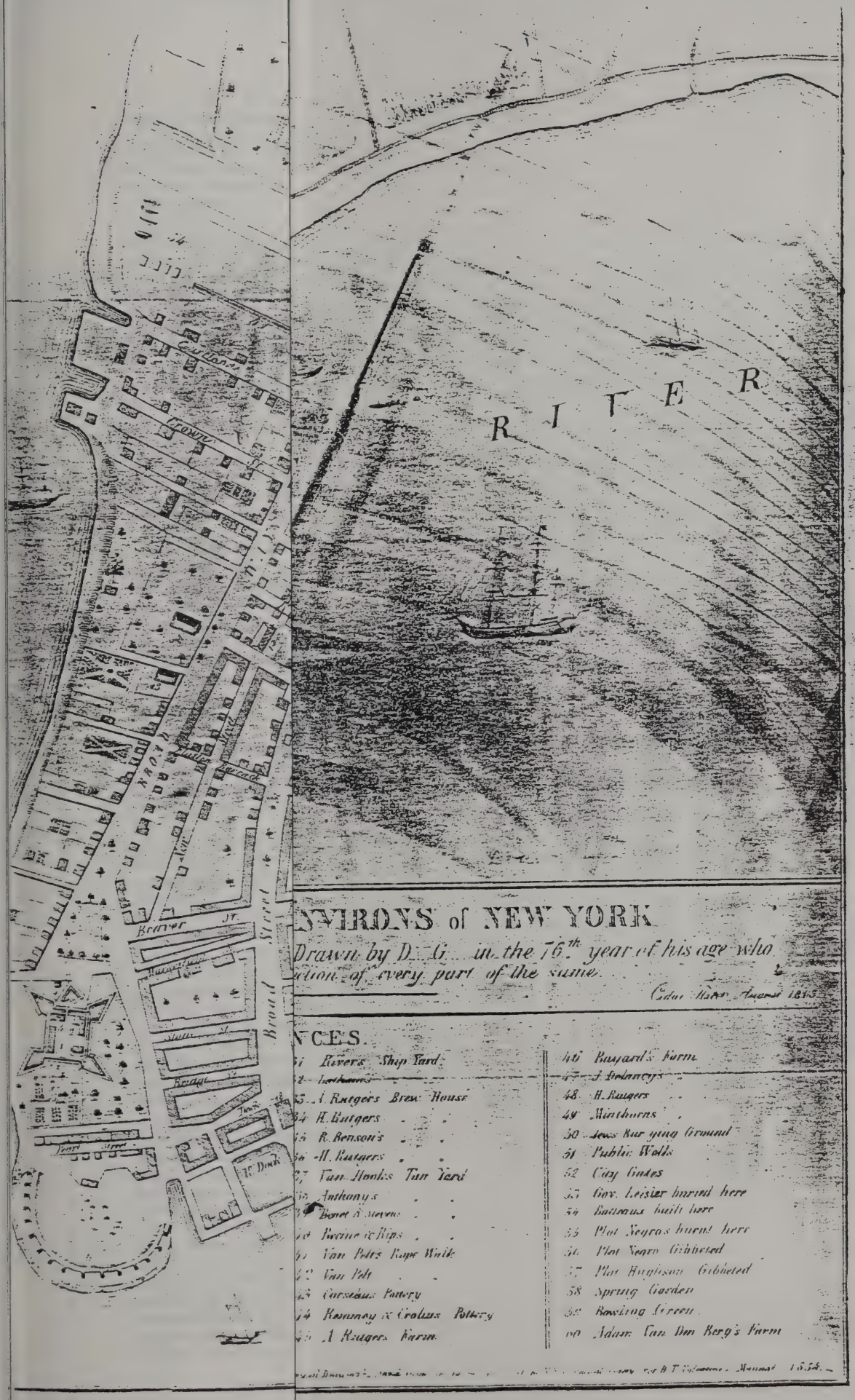
Jackson v. Gilchrist, 15 Johns. 91.

By the charter of liberties and privileges granted by the proprietary government, or the Duke of York, passed October 30, 1683, and which was the Magna Charta of the inhabitants of the province, it is declared, "that no man, of what estate or condition soever, shall be put out of his lands or tenements, nor taken, nor imprisoned, nor disinherited, nor banished, nor any ways destroyed without being brought to answer by due course of law." It also declares, "That no estate of a feme covert shall be sold or conveyed but by deed acknowledged by her in some court of Record, the woman being secretly examined, if she doth it freely, without threats of compulsion of her husband. (See 2 N. R. L. Appendix III, IV. V.) It contains the principle of the English Magna Charta, and of the bill of rights of the people of this state, that no person shall be disseised of his freehold, etc., but by the lawful judgment of his peers or due process of law. (1 N. R. L. 45.) The Magna Charta of England is a limitation of the powers of the British Parliament; and a colonial legislature, which could make no laws repugnant to the laws of England, nor claim that omnipotence which is said to belong to parliament, could not make a law in violation of this great charter of rights. (1 Bl. Com. 138, 139.) The act, therefore, was void, as contrary to the laws of England. In the case of Gardner v. The Trustees of the Village of Newburgh (2 Johns. Ch. Rep. 162), the chancellor held that the legislature could not take away private property, even for necessary public purposes, without providing a fair compensation to the owner; and he cites numerous authorities in support of this doctrine, from books of jurists, and the codes and constitutions of the different countries. This Court has, also, in several cases, recognized the same doctrine. (Jackson v. Catlin, 2 Johns, Rep. 248, 263. Dash v. VanKleek, 7 Johns. Rep. 477, 508. Catlin v. Jackson ex demm in Error 8 Johns. Rep. 520, 539, 556).

* * * * * * * * * *

It will be said, perhaps, that there is a presumption arising from lapse of time that the right of Ann Bridges, has been extinguished. But the case affords no evidence of any acts or facts which can authorize this presumption. From mere silence or inaction no inference can be drawn, or presumption raised, of the extinguishment of right, for a time short of the period of the statute of limitations. No matter how many conveyances there may be, or through how many hands the land may have passed; the presumption cannot avail, unless possession accompanies the claim of right. A presumption from mere length of time to support a right, is very different from a presumption to defeat a right. (Phillips L. of Ev. 117, 118-24. 10 Johns Rep. 377. 7 Johns. Rep. 5. 1 Caines, 84. 6 Binney's Rep. 416. 10 Mass, Rep. 105. 5 Cranch, 262). There can be no adverse


Poor House
Lutherans Church
French Church
Trinity Church
City Hall
New Dutch Church
Old Dutch Church
Presbyterian Meeting
Baptist Meeting
Quaker Meeting
Synagogue
Half Moon Battery
Collect
Bowery
RIVER


RIVER
Beaver St.
Broad Street
Water St.
Pearl Street
Dock St.
Tuck St.
Broad St.
Gardens
Crown
Hall
Wall Street
NEW YORK
SVIRONS of NEW YORK
Drawn by D. G. in the 76th year of his age who
ction of every part of the same
Cedar Water August 1845
NCES.
51 Rivers Ship Yard
52 Lockman's
53 A. Rutgers Brew House
54 H. Rutgers
55 R. Benson's
56 H. Rutgers
57 Van Hooks Tan Yard
58 Anthony's
59 Bonet & Stevens
60 Precine & Rips
61 Van Pelt's Rope Walk
62 Van Pelt
63 Cursdaus Pottery
64 Ramsey & Crolius Pottery
65 A. Rutgers Farm
66 Bayard's Farm
47 J. Delancey's
48 H. Rutgers
49 Minthorns
50 Jews Burying Ground
51 Public Wells
52 City Gates
53 Gov. Leisler buried here
54 Bastions built here
55 Plot Negros burnt here
56 Plot Negro Gibbeted
57 Plot Hughson Gibbeted
58 Spring Garden
59 Bowling Green
60 Adam Van Den Berg's Farm

A PLAN of the CITY and ENVIRONS of NEW YORK
as they were in the Years 1742 1743 and 1744 Drawn by D. G. in the 76th year of his age who had at this time a perfect & correct recollection of every part of the same
REFERENCES
1 Fort George
2 Governor's House
3 Barracks & Guard House
4 Secretary's Office
5 Governors Garden
6 Half Moon Battery
7 City Hall
8 Watch House
9 Old Dutch Church
10 New
11 Trinity
12 French
13 Lutherans
14 Presbyterian Meeting
15 Baptist
16 Quaker Meeting
17 Synagogue
18 Broad Street Market
19 Centre
20 Old Slip
21 Meat
22 Fly
23 Oswego
24 Poor House
25 Palisades
26 Work House
27 Bowzer
28 Slaughter
29 Leonard Sayers House
30 Bolton's Ship Yard
31 Rivers Ship Yard
32 Lutherans
33 A Rutgers Brew House
34 H. Rutgers
35 R. Renson's
36 H. Rutgers
37 Van Hooks Tan Yard
38 Anthony's
39 Benet's Tavern
40 Freeman & Ries
41 Van Peltz Rope Walk
42 Van Pelt
43 Cruseau's Pottery
44 Kennedy & Crolius Pottery
45 A Rutgers Farm
46 Bussard's Farm
47 J Delancey's
48 H. Rutgers
49 Winthrops
50 Jews Burying Ground
51 Public Wells
52 City Gates
53 Gov. Leisler buried here
54 Bateaus built here
55 Plot Negros burnt here
56 Plot Negro Gibbeted
57 Plot Hughson Gibbeted
58 Spring Garden
59 Bowling Green
60 Adam Van Den Berg's Farm
Fort George
EAST RIVER
Broad Street
Beaver St.
Wall
Pearl
Water
Queen
Dock
N. Dock
S. Dock

possession in this case; for the defendant entered claiming title from J. H. and Ann Bridges by an inoperative conveyance; They derived title from the ancestors of the lessors of the plaintiff and cannot allege that they entered adversely. (Jackson v. Sears, 10 Johns, Rep. 435). There is also a recital in the deed which estops him from setting up another title. (Phillips EVid. 355).

The lease to DeGroff affords no evidence of a constructive possession. He entered and was possessed in severalty, by metes and bounds, and his entry cannot be extended beyond those limits; and those claiming under him can go no farther. The rents issued out of this particular parcel can afford no evidence of a constructive possession of the whole; besides, the covenant is to pay all the quit rents to the crown. Mere perception of profits does not amount to an ouster of possession (1 Bl. Rep. 675. 2 Bl. Rep. 690. Cowp. 217 1 Wils. 176).

The payment of taxes is not evidence of possession. (Jackson v. Meyers 3 Johns. Rep. 388). **The defendant must affirmatively establish the facts from which the presumption is to be drawn.**

* * * * * * * * * *

The act of 1771 we repeat was void. The colonial legislatures were limited in their powers. (1 Bl. Com. 107, 109). The right of property is an inherent right; it is declared, says Blackstone, by the great charter, that no freeman shall be disseised or divested of his freehold, or of his liberties, or free customs, but by the judgment of his peers, or by the law of the land, which Coke says, means by process of law. (2 Inst. 53, note 8) Private property cannot be taken without the owner's consent. (1 Bl. Com. 138, 139). Our Bill of rights is copied from Magna Charta (4 Bl. Com. 423, 424. 1 N. R. L. 46). As to the acts passed in other colonies, if they were arbitrary and unconstitutional, they afford no authority or precedent for us. Besides it will be found that in all the other states, they proceeded on usage, and the private examination of the wife was indispensable.

* * * * * * * * * *

Several objections have been taken to this act, however, which it is necessary to notice. It is said to be against the express provisions of the Charter of the Duke of York, of 1683, which declares that no estate of a feme covert shall be sold or conveyed, but by deed acknowledged by her in some Court of Record, the woman being secretly examined, if she doth it freely, without threats or compulsion of her husband. (2 N. R. L. App. 14.) If this charter was in force here when the acknowledgment in question was taken, and when the act of 1771 was passed, there would be weight in the objection; but I believe it has been the general, if not the universally received opinion, that this charter was not in force here after the revolution of 1688. In the journals of the general assembly of New York of the 24th April 1691, we find the following proceedings:

Upon an information brought into this house by several members of the house, declaring, that the several laws made formerly by the general assembly and his late Royal Highness James Duke of York, etc., and also the several ordinances or reported laws, made by the preceding governors and council for the rule of their majesties' subjects within this province, are reported amongst the people to be still in force: resolved, nemine contradicente, that all the laws consented to by general assembly under James Duke of York, and the liberties and privileges therein contained, granted to the people, and declared to be their rights, not being observed, and not ratified and approved of his royal highness nor the late king, are null, void, and of none effect; also the several ordinances made by the late governors and councils, being contrary to the constitution of England, and the practice of the government of their majesties' other plantations in America, are, likewise, null, void, and of none effect, within this province. (1 Vol. Journals S.) We do not find this charter published in any edition of the colonial laws, as we most undoubtedly should had it been considered in force. By a resolution of the general assembly of the 12th November 1709 (1 Vol. Journals 267). Mr. Bradford is directed to print all the acts of the general assembly of the colony then in force since the arrival of Col. Stoughton (January 1689) and the charter of the Duke of York, would, undoubtedly, have fallen within the scope and purview, if not within the letter of the resolution; for that charter purports to be enacted by the governor, council and representatives, in general assembly, and by the authority of the same. That the charter of the Duke of York, as such, was not considered in force after the revolution of 1688, is very obvious: because the general assembly of the colony in 1691, passed an act declaring what are the rights and privileges of their majesties subjects inhabiting within the province of New York, in which many of the provisions in the charter of the Duke of York are incorporated, and, doubtless, all that were intended to be in force; among others, the very provision relative to conveyances by femes covert. (Brad. edition of the laws 2.5.) But this act was repealed by the king on the 11th of May, 1697, as appears by a marginal note in Van Schaack's edition of the laws, page 5, and which was made pursuant to the authority given him by the act of 1772 (Van Schaack's edition of the laws 676) appointing him to revise and digest the laws of the colony. The charter of the Duke of York not being included in this revision affords irresistible evidence that it was not deemed to be in force here, for he was authorized and required to revise, digest and cause to be printed all the laws from the happy revolution, down to the end of the then session (1772). From this view of the acts and proceedings of the colonial legislature, we may very safely conclude that in 1711 when the acknowledgment in question was taken there was no charter or statute regulation on the subject in force here; but that a loose and unsettled practice prevailed as it set forth in the recital to the act of February 1771. It, therefore, became highly necessary and proper that what had been done under such usage or practice should receive legislative sanction.

JACKSON VS. MYERS, 3 JOHNS. PAGE 388:

The payment of taxes, and the partitions made by the Ludlow family, were not evidence of actual possession, though they may have been of a claim of title. The lessors of the plaintiff, therefore, failed to support a right founded on possession, and the defendant showed an outstanding title in the legal representatives of Baltus VanKleeck.

With the Church farm identified as no other than the previous Queen's Farm, and previous to that the King's Farm, and previous to that the Duke's Farm, which was originally the Company's Farm,

With this Duke's-King's-Queen's-Church Farm located south of the palisades or stockadoes.

With the Bogardus farm located north of the palisades or stockadoes,

With the omission of any northern or southern description in the Queen Anne grant, rendering it a nullity for the basis of a claim of color of title,

With Trinity limited in its claim to only such lands as had been possessed, enclosed and improved for sixty years,

With no evidence in this case of actual possession for the

This being the day appointed by an order of this Board of the 9th of this instant March for Letting to farm by publick Out Cry as well the wharfs docks & Slips of this City, as the Stalls and Standings in the Several markets of this City for the term of two years to Commence on the first day of May next, the wharfs docks and Slips being accordingly exposed to publick auction, were Struck off to Luke Roome [461] of this city cordwainer for the Sum of £690 Subject to the conditions just read, and by him Since Subscribed to in the presence of this board. the Stalls and Standings in the Said Markets were also exposed to publick auction and Struck of to John Bingam of the Same City Cordwainer for the Sum of £250 Subject to Conditions also Read to him and by him Since Subscribed to in the presence of this board, ORDERD that the Clerk prepare Leases to them Respectively and likewise a Bond from each of them, with Good Sureties to this Corporation for the performance of the Covenants in their Respective Lease in Double the Sum the Same Sold for.

City of New York } SS. { AT a Common Councill held at the City Hall of the Said City on friday the 7th day of Aprill 1769.

Present/. Whitehead Hicks Esqr Mayor

Francis Filkin
George Brewerton
Benjamin Blagg
Elias Des Brosses
Andrew Gotier
Abraham P: Lott
Jacob Brewerton
Mathew Buyce
Benjamin Huggit
John Abeel
Huybert Van Wagenen
James Van Varick
Peter Curtenius

} Esqrs Aldermen

} Assistants

ORDERD the Mayor Issue his warrant to the Treasurer
Nº 2076 of this City, to pay to John Mitchel or order the Sum of Five pounds for one Quarters Sallary due unto him as publick whipper of this City, & ending the fifth Instant.

ORDERD the like to Mr Peter T: Curtenius or order the
Nº 2077 Sum of £8 : 14 : 11 in full of his account for a Cast iron Stove by him Supplied for the use of the hott house and the expences attending the Same as ꝑ account audited by this board and allowed of.

ORDERD the like to Mr Cornelius a Turk or order the
Nº 2078 Sum of £9 : 5 for new handling a Quantity of Fire buckets and mending Sundry others as pr his account Sworn to and allowed of by this board.

THE PETITION of the Rector and Inhabitants of the City of New York in Communion with the Church of England as by Law Established being again read praying that this Corporation would be favourably pleased to grant unto them their Successors & [462] Assigns all the lands & Soil Fronting their Land on Hudsons River from the north Side of Division Street to the Ground Granted to the Governors of the College and from the north Side thereof to the Stockadoes, to Low water mark, and the Soil under the water from thence two hundred feet into the Said River, upon Such Reasonable Conditions as to this Corporation Shall Seem meet whereupon it is ORDERD by this board that Aldm Filkin, Aldm Lott, Aldm Brewerton & Aldm Des Brosses, Messrs Jacob Brewerton, Benjamin Huggit & Peter T: Curtenius or the major part of them be a Committee to Conferr with and Receive Such proposals as the said Rector and Inhabitants of the City of New York in Communion of the Church of England as by Law Established may have to offer, Relative to the Terms of Granting and make Report thereof to this board with all convenient Speed.

granted p. 363

THE PETITION of Archibald Kennedy Esqr and others being read praying that this Corporation would be favourably pleased to Grant unto them the Soil fronting their respective Lots of Ground in Hudsons River the whole breadth thereof from high to Low water mark and extending from thence into the Said River two hundred feet on Such Reasonable Rents, Reservations & Conditions as to this board Shall Seem meet whereupon it is ORDERD by this board that Aldm Filkin Aldm Lott, Aldm Brewerton, Aldm Des Brosses, Messrs Jacob Brewerton, Benjamin Huggit and Peter T: Curtenius or the Major part of them be a Committee to conferr with and receive Such proposals as the petitioners may have to offer Relative to the terms of Granting

TRINITY BREAK YE MY COMMANDMENTS?

out, therefore are of Opinion he ought not to have the full Breadth of his Present Dwelling house agreeable to the prayer of his said Petition, but only to have his Proportion of the same, agreeable to a plan, or Survey herewith Annexed, the said Nicoll being willing and Desirous to pay a Reasonable Consideration for the Same; which Report being read it was thereupon ORDERED that there be Granted to the said Edward Nicoll the water Lot by him prayed for in front of his Dwelling house, to begin from the Street there, which is to be enlarged of the Breadth of forty feet and so to extend from thence Easterly into the Dock the length of Seventy feet Clear of said Street of forty feet, he loosing in his Breadth on that length, in the same proportion as the other of his Neighbours do; and to pay for the same on that length as the Grantees of the East Great Dock have Covenanted to do, on the length of four hundred feet, and further added that the Clerk prepare the Draft of a Grant to him accordingly, upon the terms above mentioned provided the said Terms Shall be Approved of by the said Edward Nicoll & not otherwise.

[177] The draft of the Grants of Several Water Lots to Augustus & Frederick Van Cortlandt, Peter Jay, John William Vredenburgh, the Heirs of Hendrick Remson, Henry Holland, Waldron Blau and William Milliner was preferred to this Board, read & approved of [and] ORDER'D that the Clerk engross the Same

City of New York } SS { AT a Common Council held at the City Hall of the said City on Tuesday the 16th day of June 1772

Present/ Whitehead Hicks Esqr Mayor
Thomas Jones Esqr Recorder

Esqrs Aldermen:
Francis Filkin
George Brewerton
Benjamin Blagge
Andrew Gautier
John Dikeman
Jacobus Lefferts
George Brewerton Junr

Assistants:
John Abeel
Benjamin Huggit
Huybert V: Wagenen
John W: Vredenburgh
John Hardenbrook
Henry Brevoort

tioners for Water Lots lying in the Dock ward of this City between the Coenties Slip and the Old Slip, praying an Abatement of the Quit Rent which this Board heretofore Resolved Should be Paid for a Grant of the Same, and this Board having reconsidered the Same, thereupon ORDERD that no Abatement Whatsoever be made, and that the Resolution heretofore by them made and entered in their Minutes be Strictly adhered to

THE PETITION of the Rector & Inhabitants of the City of New York in Communion with the Church of England as by Law Established, being again Read, Praying that this Corporation would be favourably pleased to Grant unto them their Successors and Assigns all the Land & Soil fronting their land on Hudsons River from the North Side of Division Street to the Ground Granted to the Governors of the College, and from the North Side thereof to the Stockadoes to low Water Mark and the Soil under the Water from thence two hundred feet into the said River upon Such Reasonable Conditions, as to this Corporation Shall Seem Meet. the Prayer of which said Petition was Accordingly taken into Consideration [179] by this board, and after duly Considering the Same; It was thereupon agreed to, & ORDER'D, that there Should be Granted to the said Rector and Inhabitants of the City of New York & their Successors & Assigns for ever all that Space of Land and Soil fronting their Land on Hudsons River, beginning from the North Side of Veseys Street, and so Extending from thence, to the Land and Soil Granted to the Governors of the College, and from the North Side thereof, to the Stockadoes, to low Water Mark, and the Soil under the Water from thence two hundred feet in the said River; they the said Rector & Inhabitants of the City of New York &c and their Successors, Paying for the Same to this Corporation for ever, from the date of their said Grant, the Yearly Quit Rent of one Shilling pr foot for every foot so to be Granted them fronting Hudsons River aforesaid/.

ORDER'D by this board, that the Sum of Twenty Pounds
No 2414 be Allowed towards Defraying the Expence of filling up Beekmans Slip in Such manner as to Carry off the Water without a drain, and that Alderman Blagge, Alderman Lefferts, Alderman Brewerton and Alderman Gautier together with Messrs Van Waganen, Huggit & Brevoort or the Major part of them be a Committee to Superintend and direct the filling up of the Same Slip Accordingly; in the doing of which the said Committee are to take Care that the said Slip be not filled up beyond or farther to the Eastward than the Corner fronting Frederick Bassets. (Warrt to Wm Moore for this Sum.)

TRINITY BREAK YE MY COMMANDMENTS?

statutory period of sixty years, aye, even twenty-five years before the revolution,

With all the documentary evidence introduced in the form of leases failing wholly to establish possession,

My readers will be astonished, indeed, when they realize, that down to the time of the revolution, the period under consideration in this volume, no evidence was introduced, and no facts, establishing actual occupation and possession, on which to base, or which could support the claim of any vested interest in this property, (the Bogardus Farm) by either adverse possession, or otherwise.

Water Lots.

In petitioning for the water lots in the year 1769, Trinity prayed for all the land and soil fronting their land on the Hudsons River, and then describe the bounds of that land, from the north side of Division (now Fulton Street) street, to the ground granted to the Governors of the College, and from the north side thereof to the STOCKADOES.

In granting that petition, there was granted to Trinity forever, all that space of land and soil fronting their land on Hudsons River, from the north side of Vesey Street, and so extending from thence to the land and soil granted to the Governors of the College, and from the north side thereof to the STOCKADOES.

This petition was before the Common Council the 7th of April, 1769. Seven years before the revolution. Plates Forty-one and Forty-one-A.

This petition was granted June 16th, 1772, four years before the revolution. Plates forty-two and Forty-two-A.

Constructive Trust

In Pomeroy's Eq. Jur. Section 155, the author says: citing many cases: "If one party obtains the legal title to property, not only by fraud or by violation of confidence or of fiduciary relations, but in any other unconscientious manner, so that he cannot equitably retain the property which really belongs to another, equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner."

And again in Section 1053: "In general, whenever the legal title to property, real or personal, has been obtained through actual fraud, misrepresentations, concealments, or through undue influence, duress, taking advantage of one's weakness or necessities, or through any other similar means, or under any other similar circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interests, equity impresses a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never perhaps have had any legal estate therein; and a court of equity had jurisdiction to reach the property either in the hands of the original wrongdoer, or in the hands of any subsequent holder until a purchase of it in good faith and without notice acquires a higher right, and takes the property relieved from the trust. The forms and varieties of these trusts, which are termed ex maleficio or ex delicto, are practically without limit. The principle is applied wherever it is necessary for the obtaining of complete justice, although the law may also give the remedy of damages against the wrongdoer."

SARAH R. ANGLE VS. CHICAGO ST. PAUL MINNEAPOLIS & OMAHA RWY. CO. PAGE 55:

151 U. S. p. 1

Courts of equity will if acts have, by fraud, been prevented from being done, interfere and treat the case exactly as if the acts had been done; and this they will do by converting the party who has committed the fraud, and profited by it, into a trustee for the party in whose favor the act would otherwise have been done.

* * * * * * * * * *

In a suit between individuals, neither party in a court of justice can be heard to question the purity of the motives of the members of a legislative body.

* * * * * * * * * *

One obtaining a patent to land from the United States by fraud towards another, or who affects himself with a trust holds the title thus acquired for the benefit of those who have been injured by his conduct.

Groves v. Fulsome, 16 Mo. 543; 57 Am. Dec. 247; Lewis v. Lewis, 9 Mo. 182; Bird v. Ward, 1 Mo. 398, 13 Am. Dec. 506; Lindsay v. Hawes, 67 U. S. 2 Black, 554 (No. 16, 265) Garland v. Wynn, 61 U. S. 20 How. 6 (No. 15, 801) Stark v. Starr 73 U. S. 6 Wall. 402, 419 (18; 925, 930) White v. Cannon, 73 U. S. 6 Wall. 443 (18:923) Rogers v. Brent, 10 Ill. 573, 50 Am. Dec. 422.

* * * * * * * * * *

Our conclusions in respect to this matter may be summed up thus: The Portage Company would have completed the work but for the wrongful acts of the Omaha Company. In consequence of the disability thus caused, and also moved by the false representations of the Omaha Company, the Legislature resumed its grant and made a re-grant to the Omaha Company. The validity of that act is conceded. It is to be presumed the Legislature acted with proper regard to the public interest and without any improper motives, or inducements. Conceding all this, it is equally to be presumed that it left the redress of private wrongs to the judicial department. It attached no conditions to the grant to the Omaha Company which would prevent the appropriation of those lands to the satisfaction of any claims against that company. And hence to hold the Omaha Company as trustee for the creditors of the Portage Company in respect to these lands, neither impeaches the validity of the action of the legislature, nor casts any imputation upon its knowledge or motives. It may also be noticed that the purpose of this grant from Congress in the first place, and from the State to the Companies in the second place, was to aid in the construction of the railroad. That purpose having already been accomplished there is no thwarting public policy or the purposes of the grant if the lands granted shall now be appropriated, through the processes of the courts to the satisfaction of any claims against the Omaha Company.

Passing now to the other of the two objections, it may be conceded that an action at law would lie for the damages sustained by the Portage Company through the wrongful acts of the Omaha Company. Indeed, that is a fact which underlies this whole case. Yet while an action at law would lie, it does not follow that such remedy was either full or adequate. Waiving the question as to the solvency of the Omaha company and assuming that any judgment against it for damages could be fully satisfied by legal process, there remains the proposition that it is contrary to equity that the defendant should be permitted to enjoy unmolested that particular property, the possession of which it sought to secure, and did in fact secure, by its wrongful acts.

* * * * * * * * * *

And when the Omaha Company, by its wrong doings, secured the full legal title to those lands, equity will hold that the party who has been deprived of payment for his

work from the Portage Company by reason of their having been taken away from it, shall be able to pursue those lands into the hands of the wrongdoer, and hold them for the payment of that claim which, but for the wrongdoings of the Omaha Company, would have been paid by the Portage Company, partially at least, out of their proceeds. While no express trust is affirmed as to the lands, yet it is familiar doctrine that a party who acquires title to property wrongfully may be adjudged a trustee ex maleficio in respect to that property.

UNITED STATES V. HUCKABEE, 16 WALL. 414-436.

* * * * * * * * * *

Duress it must be admitted, is a good defense to a deed or any other written obligation, if it be proved that the instrument was procured by such means; nor is it necessary to show, in order to establish such a defense, that actual violence was used, because consent is the very essence of a contract, and if there be compulsion, there is no binding consent, and it is well settled that moral compulsion such as that produced by threats to take life, or to inflict great bodily harm, as well as that produced by imprisonment, is sufficient in legal contemplation to destroy free agency, without which there can be no contract, because in that state of the case there is no consent. Brown v. Pierce, 7 Wall. 214, 19 L. ed. 136. Unlawful duress is a good defense to a contract if it includes such degree of constraint or danger, either actually inflicted or threatened, and impending, as is sufficient in severity or apprehension to overcome the mind and will of a person of ordinary firmness. Chit. Cont. 217; 2 Greenl. Ev. 283. Decided cases may be found which deny that contracts procured by menace of a mere battery to the person, or of trespass to lands, or loss of goods, can be avoided on that account, as such threat, it is said, are not of a nature to overcome the will of a firm and prudent man; but many other decisions of high authority adopt a more liberal rule, and hold that contracts procured by threats of battery to the person, or of destruction of property, may be avoided by proof of such facts, because, in such a case, there is nothing but the form of a contract without the substance. Foshay v. Ferguson, 5 Hill. 158; Bk. B. Copeland, 18 Md. 317; Eadie v. Slimmon, 26 N. Y. 12; 1 Story Eq. Jur. 9th ed. 239. Positive menace of battery to the person or of trespass to lands, or of destruction of goods, may undoubtedly be, in many cases, sufficient to overcome the mind and will of a person entirely competent, in all other respects, to contract, and it is clear that a contract made under such circumstances is as utterly without the voluntary consent of the party menaced as if he were induced to sign it by actual violence; nor is the reason assigned for the more stringent rule, that he should rely upon the law for redress, satisfactory, as the law may not afford him anything like a sufficient and adequate compensation for the injury. Baker v. Morten, 12 Wall. 158, 20 L. ed. 264.

WHITE VS. CANNON, 6 WALL. 443:

Under this act John McLaughlin, son of Edward McLaughlin presented to the register and receiver a claim for the same tract of 640 acres, which had been claimed by his father and produced the testimony of two witnesses, by which he proved, the habitation and cultivation of the lands by him previous to the 22nd February 1819. The testimony produced appears to have been taken in 1834 for some reasons not disclosed by the record, perhaps, as suggested, by counsel, in anticipation of the passage of the act, or some act of a similar kind. In 1840 the register and receiver reported this claim and recommended its confirmation. The report was laid before congress and the claim was confirmed by the seventh section of the act of July 6th, 1842. 5 State. 491.

In September 1844, a patent was issued to him, pursuant to this act of confirmation. In June 1848, he transferred his interest to the defendant. In May 1843, before the patent issued, John McLaughlin made an affidavit and placed it on record in the Land Office of the district, that he never at any time previous to the 22nd of February, 1819, resided upon the tract, but that it was within his knowledge that his father Edward McLaughlin had resided upon it and cultivated it on that day, and for several years previous, and that his father had transferred his claim by sale to Leonard Dyson, who as his assignee made entry of the sale.

* * * * * * * * * *

Such being, in our judgment, the true intent and meaning of the reservation, the case presented can be readily disposed of. It becomes then the ordinary case of the party acquiring by false and fraudulent means, a legal title to property to which another has the better right, and which he would have obtained, had the facts, as they existed, been truly represented. In such case equity will compel the holder of the legal title to transfer it to the party who was justly entitled thereto.

NATHANIEL D. MOORE, VS. CHRISTINA CRAWFORD, 130 U. S. P. 122

Fraud, indeed, in the sense of a court of equity, properly includes all acts, omissions and concealments, which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. And Courts of equity will not only interfere in cases of fraud to set aside acts done, but they will also, if acts have by fraud been prevented from being done by the parties, interfere and treat the case, exactly as if the acts had been done. 1. Story, Eq. Jur. Section 187.

* * * * * * * * * *

In Huxley v. Rice, 40 Mich. 82, it is said; "It is the settled doctrine of the court that where the conveyance is obtained for ends which it regards as fraudulent or under circumstances it considers as fraudulent, or oppressive, by intent or immediate consequence, the party deriving title under it will be converted into a trustee in case that construction is needful for the purpose of administering adequate relief; and the setting up the statute of frauds by a party guilty of the fraud or mistake in order to bar the court from effective interference with his wrongdoing, will not hinder it from forcing on his conscience this character as a means to baffle his injustice or its effects."

* * * * * * * * * *

In Way vs. Arnold, 18 Ga. 181, 193 Pyncheon, having no title, sold to Way with warranty, and, subsequently acquiring title, sold to Arnold. It was held that "If Pyncheon upon consideration, conveyed this subsequently acquired interest, and such was his intention, equity will decree a title to the after acquired estate, and the second grantee Arnold, provided he purchased with notice, would be affected by said notice, and could not conscientiously hold the land in dispute."

HENRY LOCKHARD V. H. C. LEEDS AND OTHERS, 195 U. S., PAGE 427:

Mr. Justice Peckham after making the foregoing statement, delivered the opinion of the court:

One phase of this controversy has already been before this court in Lockhard v. Johnson, 181 U. S. 516, which was an action of ejectment brought by the plaintiff (who is the complainant herein) to recover possession of the mine above mentioned from the defendants herein. It was there held that the plaintiff could not maintain an action, as the facts showed that he had no legal title, and that the remedy he might have, if any, was in equity.

Upon the trial of the ejectment action, the plaintiff offered to prove in substance, the same facts as are set forth in this bill in regard to Pilkey's action under the agreement with plaintiff and Johnson, and the fraudulent conspiracy entered into by the defendants for the purpose of defrauding the plaintiff out of his right to such mine. The evidence was objected to and excluded on the ground that it did not show any legal title in the plaintiff, assuming its truth; that, in the courts of the United States an action of ejectment was based upon the strict legal title, and if the plaintiff failed to show that it was in him he must fail in such action.

* * * * * * * * * *

Under the agreement first mentioned between plaintiff Johnson and Pilkey, as copartners, it became the duty of Pilkey, in order to complete the location it was his duty to make, to file a copy of the notice in the recorders office and the parties to the agreement had the right to rely upon Pilkey to file the necessary copy for record; and it is plain that the failure to file on the part of the plaintiff was because of his ignorance of such failure on the part of Pilkey, consequent upon Pilkey's fraudulent conspiracy and agreement with the other defendants not to file it. After the discovery of the conspiracy, the plaintiff did procure a copy of the original notice posted by Pilkey on the ground, and filed the same in the office of the recorder on the 9th of December, 1893.

The agreement between the plaintiff Pilkey and Johnston shows it to have been the duty of Pilkey to make the necessary filing for record, in order to complete the location of the mine, which he, in the agreement, was to do. The plaintiff had the right to rely upon Pilkey carrying out that agreement and fulfilling his duty thereunder, by making the necessary filing: and plaintiff alleges that he would have done all things made necessary by law, had it not been for this fraudulent combination and conspiracy on the part of the defendants. We regard the allegations of the bill as sufficient in these particulars.

* * * * * * * * * *

The facts constituting the fraud are sent forth, and it is alleged that the parties doing the acts mentioned concealed them from the plaintiff for the purpose of defrauding plaintiff out of his interest and ownership in the mine. Having set out all the facts upon which the right to relief is based, the plaintiff asks specially for the possession, and also for the proceeds of the mine, because by reason of the facts, the location made by the defendants was a void location. Whether it was a void location or not, was a matter of law, arising from the facts appearing in the bill. Those facts were not changed in the slightest degree, nor were any inconsistent facts set up thereafter. The plaintiff now, under his prayer for general relief, contends that although the location of the Washington Lode by the defendants may have been so far valid as to create a title in the defendants, yet that, by reason of the fraud already distinctly set forth in the bill, the plaintiff was entitled to avail himself of that title, and to hold them as trustees ex maleficio for his benefit.

* * * * * * * * * *

There is nothing in the intricacy of equity pleading that prevents the plaintiff from obtaining the relief under the general prayer to which he may be entitled upon the facts plainly stated in the bill. There is no reason for denying his right to relief, if the plaintiff is otherwise entitled to it, simply because it is asked under the prayer for general relief, and upon a somewhat different theory from that which is advanced under one of the special prayers.

* * * * * * * * * *

All the acts of fraud set up in the bill, committed by the defendants, are, if proved, sufficient to entitle the plaintiff to treat them as trustee ex maleficio, and to recover from them, as such trustees, all the materials taken from the mine.

JONES VS. VANDOREN, 130 U. S. PAGE 611:

Mr. Justice Gray delivered the opinion of the court: The only difference between the original and amended bills is that the first alleges that the defendant Jones, took the conveyance of the plaintiff's right of dower upon an express trust for her, whereas, the second alleges that he procured the conveyance from her by fraudulent misrepresentations as to the nature of the instrument, creating a trust by operation of law in her favor.

* * * * * * * * * *

But we are of opinion that the court erred in sustaining the demurrer to the amended bill.

One who by fraudulent misrepresentations obtains a conveyance from the owner of any interest in property, real or personal is in equity a trustee ex maleficio for the person defrauded; and anyone taking the property from such trustee with notice of the fraud and of the consequent trust, is affected by the trust. Typer v. Black, 54 U. S. 13 How. 230 (14:124) National Bank v. Insurance Company 104 U. S. 54 (26:693); Moore v. Crawford, 130 U. S. 122 (Ante 878). When a trustee, dealing with the trust property, together with property of his own as one mass, conveys part of the whole to a purchaser who takes it for value in good faith, without notice of the fraud or of the trust, and who therefore acquires a good title, the question how far the rest of the property shall be charged with the trust, so as fully to indemnify the person defrauded can only be determined in a court of equity.

* * * * * * * * * *

But the general object of the bill is to secure to the plaintiff the dower interest of which she has been defrauded, and the bill contains a prayer for general relief. This is sufficient to enable a court of equity to decree such relief as the facts stated in the bill justify. English v. Foxhall 27 U. S. 2 Pet. 395 (7:531); Tayloe v. Merchants Ins. Co. 50 U. S. 9 How. 390 (13:187); Texas v. Hardenbergh 77 U. S. 10 Wall 68 (19:839).

What has been said furnishes an answer also to the argument that the plaintiff's right, if any, is barred by the statute of limitations. The plaintiff is not suing for her dower as such, the right to which accrued in 1863, but for property of which she has been defrauded, and in such a case, the statute of limitations begins to run only from the discovery of the fraud.

JACKSON VS. VANVALKENBURGH, 8 COWAN, PAGE 260:

The inquiry is, how particular and certain must the notice be, which shall be deemed equivalent to registry? In the case of Dey v. Dunham (2 John. ch. Rep. 182) Chancellor Kent, observed, that "The notice to break in upon the registry acts must be such as will, with the attending circumstances, affect the party with fraud. The ground of the numerous decisions seems to be the actual fraud of the party in taking a second conveyance and with knowledge of the first, and with intent to defeat it." In that case it was held that a notice which is to put a party on inquiry, is not sufficient to break in upon the policy and express provisions of the act. Lord Alvanley, in Jolland v. Stainbridge, (3 Ves. 478) observes "The person who takes subsequently, must know exactly the situation of the prior deed, and have meant to defraud." Lord Hardwicke in Hine vs. Dodd (2 Ark. 287) says that nothing short of fraud or clear and undoubted notice would do. This case is cited with approbation (8 Johns. 141).

The case of Jackson v. Burgott (10 Johns. 457) proceeds on the same ground. Actual notice was held necessary. So also in Dunham v. Dey (18 John. 555) on appeal the question what constitutes notice, was examined. Platt J. who delivered the opinion of the court, observed that "Where the proof of notice is clear and certain, it is per se evidence of fraud in him who attempts to defeat a prior encumbrance by setting up a subsequent deed."

JACKSON VS. BURGOTT, 10 JOHNS. PAGE 457:

It may be assumed as a settled principle in the English law, that where a subsequent purchaser, whose deed is registered, had notice, at the time of his purchase, of a prior registered deed, the prior deed shall have the preference; for the object of the register acts is to give notice to subsequent purchasers, and in the case stated, the object of the act is answered and his purchase under such circumstances is a fraud. It is considered as done mala fide by assisting the original vendor to defraud the prior vendee; and the courts will not suffer a statute made to prevent fraud, to be a protection to fraud. It may often be a question what facts or circumstances will amount to notice sufficient to charge the party; but if the fact of notice be once made out, there is no doubt in the books but that as against such prior deed, the subsequent registered conveyance is to be adjudged fraudulent and void. This principle I apprehend to be equally just and solid, and it cannot but excite surprise that the French ordinance of 1747 compiled under the auspicious of so excellent, pure, and distinguished a majestrate as Chancellor D'Aguesseau, will admit of nothing not even of the most actual and direct notice to countervail the prior registry.

* * * * * * * * * * *

The only point that remains to be considered in this case is, whether the question of notice is not exclusively of equity cognisance.

The decisions have come from the court of Chancery, but whenever the point has occurred to the judges of the courts of Common Law, they have always recognized the existence and solidity of the rule. (Lord Mansfield in 1. Burr. 474, and Lord Kenyon in Peake's N. P. 190, 191) And if the question of notice be a question of construction of the statute, and not merely of a trust, or equity, binding on the conscience, the cognizance of it must belong equally to a court of law. The design of the act was to give notice, by means of the registry, and thereby prevent imposition, mistake and fraud. The court of Exchequer in Cheval v. Nicols (1 Stra. 664) admitted that the statute only intended to give such notice as would prevent fraud, and that the statute never intended to prelieve a purchaser with notice though the first deed was not registered. It is, therefore, a question on the interpretation of the Registry Acts, and upon every sound principle, courts of common law have cognizance of the case. Courts of law and equity are equally bound to give statutes a sound interpretation in prevention of the mischief, and are equally bound to carry the intention into effect; and courts of law have concurrent jurisdiction in all cases of fraud. Fraud will invalidate, in a court of law as well as in a court of equity, and annul every contract and every conveyance infected with it. The ground of the interference of the courts in these cases of notice, is the fraud. In Fermor's Case (3 Co.77) it was resolved that a fine levied by fraud was not binding, and that "such fraudulent estate was as no estate in judgment of law," and it was declared that all acts and deeds, judicial as well as extrajudicial, if mixed with fraud, were void. When the statute says that every deed not recorded shall be adjudged fraudulent, and void, against a subsequent purchaser for valuable consideration, whose deed shall be recorded, it undoubtedly meant a subsequent purchaser in good faith, and who did not purchase with a fraudulent intent. A subsequent purchaser mala fide was not within the purview of the act, and not intended to be protected; for the statute never meant to give sanction to fraud, or to render a fraudulent act legal. That is impossible. Consequently in the case of a second purchaser with notice, no estate passes to him by the deed. "Such fraudulent estate is as no estate in judgment of law."

(NO. III) 8 HENRY VI. C. 9 — THE DUTY OF JUSTICES OF PEACE WHERE LAND IS ENTERED UPON OR DETAINED WITH FORCE:

VI. And moreover if any person be put out or disseised of any lands or tenements in forcible manner, or put out peaceably and after holden out with strong hand; or after such entry any feoffment or discontinuance, or in any wise thereof, be made to defraud and take away the right of the possessor; that the party grieved in this behalf shall have assize of novel disseisin or a write of trespass against such disseissor. And if the party grieved recover by assize or by action of trespass, and it be found by verdict or in any other manner by due form in the law, that the party defendant entered with force into the lands and tenements or them after his entry did hold with force, that the plaintiff shall recover his treble damages against the defendant; and moreover that he make fine and ransom to the King. And that mayors justices, or justice of peace sheriffs and bailiffs of cities, towns and boroughs having franchise, have in the said cities and towns and boroughs like power to remove such entries and in other articles aforesaid, rising within the same as the justices of peace and sheriffs in counties and countries have.

The language of Lord Mansfield, in Moses v. Macfarlane 2 Burr., 1009, is applicable. In speaking of the equitable action for money had and received, he says: "It lies for money paid by mistake, or upon a consideration which happens to fail, or for money got through imposition, or extortion, or oppression, or an undue advantage taken of a party's situation contrary to laws made for the protection entitled to maintain the action within the rule stated in of persons under these circumstances."

PERRY ON TRUSTS AND TRUSTEES, VOL. 1, SECTION 277:

The right of a party who has been defrauded of the title to his land is not a mere right of action to set the deed aside, but it is an equitable estate in the land itself, which may be sold, assigned, conveyed and devised. In the view of a court of equity, he is still the owner of the estate, subject to repay whatever money or other property he may have received from the fraudulent grantee. And so the equitable interest of a purchaser under a contract of sale is of that character that it may be assigned or devised.

Section 228:

Time does not bar a direct trust where the relation of trustee and cestui que trust is admitted to exist, but diligence must be used to establish a constructive trust on the ground of fraud. A court of equity will refuse its aid to stale demands, where a party has slept upon his rights or has acquiesced for a great length of time, and so a constructive trust will be barred by long acquiescence, although the fraud was evident and the relief was originally clear. It is difficult to state as a general proposition what length of time will bar relief from the consequences of a fraud. It is necessarily subject to the equitable discretion of the court, and must depend upon the nature of each case and the circumstances of the parties.

Section 230:

The statute of limitations is not necessarily controlling as to the time within which relief is to be sought, in the case of a constructive trust by reason of fraud. A demand may be stale and not entitled to relief under the circumstances of the case, although much less than the time allowed by the statute of limitations has elapsed; and so a party may be entitled to relief although much more than the statute limit has gone by. In some states, however, the statute is applied to constructive trusts unless they are concealed or undiscovered.

* * * * * * * * * *

From Trinity's own witnesses, her own vestryman, from out her own mouth, as it were, have we the admission, the acknowledgment of the use of force, menace and threats, to wrest possession and occupation of this property from the Bogardus family.

James Bleecker, testified (in May and June, 1842,) that he was in the seventy-eighth year of his age, and has always (except during the revolutionary war,) resided in the city of New York. His father, Anthony L. Bleecker, resided during the war, in New Jersey, and returned to the city of New York in the year 1783, when he recommenced business as auctioneer, and continued at that business separately, and in partnership with deponent many years. Soon after the peace, and as early as 1784, the vestry of Trinity Church resumed the management of the church estate and made sales and leases thereof in lots or parcels. This business was conducted principally by a committee of the vestry, called the committee of leases; but other sales were made by public auction under the directions of the vestry. These public sales were commenced in the year 1784, and were continued from time to time until the year 1825, and were all made by deponent's father, or by some or one of the firms of which deponent was a member.

He recollects to have heard, soon after the peace of 1783, that a claim to a part of the church farm had been set up by some of the Bogardus family, in opposition to the title of the church, and many years afterwards he also heard of a lawsuit commenced under that claim by Gen. Malcom or his heirs, to recover possession of some lots situated within the Church Farm, and held by a tenant of the church; which suit was decided in favor of the church. With these exceptions, deponent has never heard the title disputed or called in question, until at or about the commencement of this suit.

On cross-examination, Mr. Bleecker testified, that Partition street was so called because it was the division line between the church and some others not remembered. The committee of leases did not keep a record of leases as he understood or knew of. The original accounts from which the list of sales was drawn, contained the prices for which the lots were sold respectively. The books of the firms referred to, are now stored away in a house, No. 36 Hudson street, with other like books. He cannot say how he came to know the boundaries he mentions, whether by plan, map, or verbal representation of others. He never heard of any persons being in possession of any part of the land described by him as the Church Farm, who were not tenants of the church, or purchasers under them.

Morgan Lewis testified, November 29, 1842, that he was in the 89th year of his age, was born in the [664] city of New York, and resided there before and at the commencement of the Revolutionary war, and after its termination.* For several years after the peace of 1783, he pursued the profession of the law, and that he and Aaron Burr were, in 1784, applied to as counsel, by a committee of Trinity Church, for advice concerning certain attempts then made and making by individuals of the Bogardus family, to get into possession of a part of the land in the occupation of the church, and of which the church claimed to be the owners. That they united in advising that all fences, and other marks of possession, erected on the church land, by Bogardus and his associates, should be removed by force, if necessary, which advice was pursued by the vestry, so that the possession of the church was maintained against all such attempts.

* * * * * * * * * *

On his cross examination, Gov. Lewis testified that he had heard of the King's Farm, but not of the Duke's Farm, nor of the Queen's Farm, nor of the Dutch West India Company Farm, and knew nothing of the boundaries of either.

James Ryker testified, (January 6, 1842,) that he was in the eightieth year of his age, and resides in the city of New York. That he removed to the city soon after the peace of 1783.

* * * * * * * * * *

He does not know the bounds of the church estate, but all the land between Broadway and the North river, and between Partition street to and beyond Duane street, as also the land occupied by Mr. Lispenard, and that called Barnnan's garden, and the land called Burr's lease, and that called Williamson's nursery.

He does not know of any land within the limits of the Church farm, and more especially of that part [667] which consists of the land on Warren, Chambers, Reade and Duane streets, (with which he had been well acquainted for the last fifty-five years,) that has been or is possessed under any title save that of Trinity Church, except some short temporary possession taken by John Bogardus, or some of that family, about the year 1784 or 1785, by putting up a fence on a piece of vacant ground just north of Duane street on the Greenwich road, which was immediately or soon after taken down and burnt by the church party. Deponent saw the fence after it was put up, and the remains of the burnt rails. The church kept

possession of this property, which they have since leased out or sold. He has also some recollection of the church having taken down a fence which had been put up further to the north, and next to Lispenard's land, which was occupied by one Higby. Christopher street, has always, within the time of his knowledge of the city, been reported and considered to be church property. It was called the Church farm. At the conclusion of the war of the Revolution, there were but few houses on Chambers, Reade or Duane streets. Warren street was more built up, and at the lower corner of that street on the north side was the place called Vauxhall, on which there was afterwards a pottery. On and after the peace of 1783, the church leased out and sold a great many lots on the above mentioned streets, and on other parts of their property, and have ever since continued to lease and sell the same.

On cross-examination Mr. Ryker testified, on being shown a map printed in 1767, he says when he came to New York in 1783, he does not recollect of any more enclosures or buildings on the land lying north of Warren street as far as the map extends, and east of the North river towards and including the meadows thereon represented, than what he saw here, (pointing to the map) except a few on Duane street and on Reade street, and a few on Chambers street. Warren street was pretty well built up, and all the streets south of it. Deponent's father-in-law put up the houses on 667 and 668, occupied by him. He remembers [668] Mrs. Broad, who lived in the fort near the foot of Harrison street, who refused to give up and remained there till the church bought her out, as he understood. The church gave her some trifle out of charity; so he understood at the time. This was soon after deponent got possession.

Peter Lorillard testified, (January 4, 1842,) that he was in the seventy-seventh year of his age, and has always, except three years of his early childhood, resided in the city of New York. That prior to the Revolutionary war, he resided with his father in Chatham street, near Chambers street, and continued to reside there until about ten years ago. * * * * * * * * *

That about two years after the peace of 1783, he understood one Bogardus had gone by night, with a party of men, and had entered and taken possession of some land of the church, of which he was immediately dispossessed. That in 1783, there were very few houses on Warren, Chambers, Reads, or Duane streets.

On cross-examination, Mr. Lorillard testified that he has heard his father and grandfather and uncle say they held under the church. The house on Broadway, on the south corner of Chambers street, was a yellowish two story wooden house; one Marselis lived there before the peace; he died about the time of the peace. He remembers a report, about 1785 or 1786 that Mr. Bogardus had gone with about twenty men and took possession of some ground, and the church went the next day, or close by, and knocked down the fences which Bogardus had put up. People were surprised that Bogardus had taken possession, as he had a law suit about it before the Revolution, and got beat. The ground he took was all bare at the time. There was no fences thereon; it was all vacant land north of Chambers street, below Chapel street, except a few houses here and there. There was Dean's distillery on the west side of Greenwich street and Murray street; there was Vauxhall on the corner of Warren and Greenwich streets; Curtenius's furnace, on the west side above Reade street; there was Lispenard's brewery, on the east side of Green- [673] wich road, south of Canal street. On the borders of the meadow, east of the brewery, was Lispenard's house. There were no enclosures on Hudson street. In 1786, Christopher street was a lane, and had fences on each side of it; it terminated in Sandy Hill road east, and Greenwich road west.

Peter Embury, testified, (January 5th, 1842,) that he was in the seventy-sixth year of his age; has resided in the city of New York his whole life, except five years, from 1829. That prior to the Revolutionary war, and as long back. He has heard that the Bogardus family claimed part of the church property, and that soon after the Revolutionary war, some or one of that name took possession of part of that property near the Greenwich road, and [674] near to the Lispenard meadows, by erecting a fence and house on it, which the church immediately caused to be pulled down. He heard of no further dispute until more then fifty years ago, when a trial was had under the Bogardus title, and a verdict given in favor of the church. From that time he heard of no claim, until about seven years ago.

William Johnson testified, November 3, 1845, that he now resides in the city of New York, and has lived in the city more than 50 years, and is upwards of 70 years of age. He became a vestryman of Trinity Church in this city in 1821, and has been a vestryman ever since. He became comptroller thereof in 1827, and resigned it in 1842.

On cross-examination, Mr. Johnson testified that he has always understood the church claimed title to the land in dispute in this cause, under a grant from Queen Anne. He does not recollect of any ancient surveys in the possession of the church, as part of its records or evidences of title, showing what was the northern limit of the Queen's farm. He does not recollect of any copy of the [684] Dutch patent to Anneke Jans or Bogardus being in possession of the corporation.

Samuel Gilford, Jr. testified January 4, 1842, that he resided in the city of New York, and is in the 68th year of his age, and has resided in the city ever since his birth, except during the Revolutionary war. He returned to the city in September, 1783. He has been acquainted with the estate of Trinity Church for more than fifty years last past. (The witness then described it.) He cannot state the eastern bounds of the Church Farm, but has always understood that it embraced the property held by Lispenard, the property called Brannan's Garden, that occupied by Colonel Burr called Richmond Hill, the land occupied by Williamson, called Williamson's Nursery, and the land occupied by General Morton, which bounded on Christopher street. He became conversant with this property when a boy, the more from being in the habit of going frequently through this part of the city to visit the family of old Mr. Clarke, who lived at Greenwich, and owned the estate called Chelsea. He was also in the habit of visiting the boys of Mr. Lispenard's family, and when at college from 1789 to 1793, the collegians were in the habit of frequenting this part of the city to bathe, and for recreation, both at Brannan's Garden, and at the place afterwards held by General Morton, where cherries were to be procured. This part of the city was generally reputed to belong to, and to be exclusively held and possessed by the corporation of Trinity Church, and by tenants of or purchasers under that corporation. The land on Warren, Chambers and Reade streets, and that part of Duane street lying a short distance from Broadway, and also the land on Broadway from Partition street to the neighborhood of Duane street, was universally considered to be part of the Church Farm, and so far as he has ever

known or heard, and as he believes, has always since the peace of 1783, been in the peaceable and uninterrupted possession of Trinity Church, and of tenants and purchasers under the church, **excepting only that he recollects a great many years ago to have heard that a fence had been put up by people claiming against the church, and was** [685] **pulled down by persons employed by the church.** With this exception, he has not known or heard that the church title was disputed until a few years past. He has never known or heard of any lot on either of the streets last mentioned, or on any other part of the Church Farm, being held or possessed under any other title or claim save that of Trinity Church.

On cross-examination, Mr. Gilford testified that the land northward from Chambers street to Christopher street, and from the North river to Chapel street, and in that direction towards Christopher street, in 1786, 1787, 1788 and 1789, **was generally vacant**, except places enclosed, viz.: Vauxhall, Curtenius's furnace, Lispenard's brewery and dwelling house and gardens, Brannan's garden, Richmond Hill house, Williamson's nursery, which he considered was the northern boundary of the Church Farm; (Williamson told him he had a lease from the church;) General Morton's place, west side of Greenwich road, and Harrison's brewery. **These are all the enclosures he recollects.** He does not know that any person paid rent for the vacant grounds.

Lewis C. Hamersley testified, (December 17, 1841,) that he was seventy-four years old, and had always resided in the city of New York, except five years and eight months during the revolution, when he resided in New Jersey. His whole family belonged to the congregation of Trinity Church, and his father served as a vestryman of that church from 1784 to about 1810, and died in 1819, being then nearly ninety-four years of age. Witness's grandmother was one of the heirs of Bogardus, who claimed a large part of the property owned by Trinity Church. He has been frequently present at conversations between his father and Mr. Bogardus, who managed the claim on behalf of the heirs. Bogardus frequently applied to his father for money to carry on the claim. Moneys were advanced to him, but not to any large amount. Others also claiming to be heirs of Bogardus, talked with his father on the subject of the claim. M. Bogardus seemed to be the only acting person.

* * * * * * * * * *

The general bounds and limits of the Church Farm were these, as he always understood. On Broadway it began on Partition, (now Fulton street,) it run up Broadway, he did not know how far, but Reade street was part of it. He did not know much about the bounds from there, but it included Hudson and Greenwich streets up to Christopher street, and also Williamson's nursery, and a public house above it, and went down to the river, and then followed the course of the river down to Partition street. The church has been in possession of the property he has described, from the time he first became acquainted [675] with it, except what they have sold or given away, except at one time there was a house called a possession house, which he had never seen; it was somewhere in Warren or Chambers street, about half-way between Broadway and the river.

Somewhere about the year 1785, the sheriff of the city, with his deputy, some of the vestry and others, went to dispossess the Bogardus's of that house. The people in the house fired on them, and wounded one of the party. The Sheriff pushed forward, took possession of the premises and delivered it to the church, and it afterwards remained in the possession of the church. The possession house was an old house that the Bogardus family hired, or some how got the possession of. His father told Bogardus that a paper had been found, which convinced him that the Bogardus's had no right to the property. His father said a gentleman, by the name of De Hart, in General Hamilton's office, had found the paper, and the vestry had given him a piece of plate as a compliment for finding it. As to that part of the Church Farm, which lies on Warren, Chambers, Reade, and Duane streets, he remembers the vestry of the church widening Warren and Chambers streets a long while ago, more than forty years ago. He has seen the committee of leases leasing property on Warren, Chambers and Reade streets.

Benjamin M. Brown testified, September 19, 1843, that he was in the 51st year of his age, and has always resided in the city of New York, except for the last five years. His father, William Brown, was for 37 years, prior to his resignation in 1819, sexton of St. Paul's Church, and deponent, from his early boyhood, was in the constant habit of passing through and over the land called the Church Farm. That in 1830 he was elected a vestryman of the corporation of Trinity Church, and continued such until his removal from the city in 1839, and during all that time took an active part in the management of the property and affairs of the corporation; and was for eight years a member of the standing committee, to whom such management was more particularly confined. (This witness testified like the others, as to the extent of the Church Farm, and its exclusive possession and enjoyment in severalty by Trinity Church.) At the period of his earliest recollection, there were but few houses in Chambers, Reade, or Barley (now Duane) streets, or in the lower part [686] of Warren street, where it intersects the Greenwich road, now Greenwich street. North of Warren street was a hill, over which this road passed. After rising the hill, the first building on the west side was Harrison's brewery, close to the North river, and in or about the block between Jay and Harrison streets. On the east side of the road, nearly opposite the brewery, was Speth's oil mill, in or near Harrison street. The next improvement was Lispenard's place, of several acres of land, lying along the Greenwich road. His mansion house was east of and at some distance from the road, and near to what is now called **Desbrosses street. North of Lispenard's was a tavern,** a place of public resort, called **Brannan's Garden,** which was also on the east side of the Greenwich road, and adjoining what is now called **Spring street.** North of and adjoining to Spring street, and also on the east side of the road was Richmond Hill, containing several acres of land, on which Col. Burr resided. The mansion house thereon is now called the Richmond Hill Theatre, between Charlton and Vandam streets, and stood where it now stands on a hill since levelled. North of Richmond Hill, on the same side of the road, was an extensive garden and nursery of trees, occupied by one Williamson, called Williamson's Nursery, through which now pass the streets called Le Roy, Morton and Barrow streets. Next to this nursery, on the same side of the road, there was a piece of land adjoining Christopher street, on which was a tavern called the Indian King, and opposite to it and the nursery, was a piece of land lying on the west side of the Greenwich road, along which there was a long hedge of white thorn, and which was possessed by General Morton, and extended from Christopher to

LeRoy street; all which parcels of land, at the time of his first knowledge of them, were, and ever since have been generally reported and considered to be parcels of the land called the Church Farm, and to be held under leases from the corporation of Trinity Church. The land occupied by Lispenard being always designated as Lispenard's lease; that occupied by Brannan, as Mareschalk or Brannan's lease that occupied by Col. Burr, as Mortier's or Burr's lease; and that occupied by Williamson, as Williamson's Nursery or Garden.

Complainants' Testimony.

Elizabeth Bogardus testified, February 5th, 1842, that she is 74 years of age, and is the widow of John Bogardus, the original complainant, to whom she was married in 1783.

In the spring of 1784, she and her husband came to the city of New York on a visit to his father, Cornelius B., who then lived in a frame house on the south or lower corner of Chambers street and Broadway, with his wife, one daughter, his son, Henry, and the wife and child of the latter, and a son of C. B.'s wife. Cornelius B. spoke of the house and the land he lived on, as being part of the land inherited by him, and the other heirs of Anneke Jans, commonly called at that time by him and others, the Dominie's Bowery and the Dominie's Hook, which extended northwardly from Chambers street; she does not remember how far. He always spoke of [690] the Dominie's Bowery and the Dominie's Hook as being the lands he claimed. He lived in that house for three years after the peace.

About a year after the close of their visit, the deponent and her husband returned to New York, and lived in a house at the south or lower corner of Broadway and Reade street, with her husband's brother, H. B., all of whom were put in possession by Cornelius B., as his tenants. Mrs. Alexander came to live there with Henry. Henry moved away in about six months after deponent went there to live. We occupied a separate part of the house while there. Deponent and her husband lived there about four or five weeks, and then removed to a vacant house and lot at the north corner of Reade and Chapel streets, were put in the same by Cornelius B., as his tenants, and lived there more than a year. The house is still standing and is occupied as a blacksmith's shop, being on the now corner of Hudson street and Broadway. When they left this house, Cornelius B. put them as his tenants into a house in Chambers street on the north side, about three lots west of Broadway, where Thomas Eagles had lived several years, and then lived. He held as tenant under the Malcolm's as she understood, who claimed to be the heirs of Anneke Jans. He gave up the possession to one McCullum, who, as deponent understood, gave up his possession to the Malcom's. Deponent and her husband next moved into a house in Warren street, as tenants of one Carpenter, and lived there one year, and then they lived in a house between Chambers and Reade streets, about three years, and after that in a house near where Masonic Hall now is. Cornelius Bogardus left the city of New York about the time she and her husband moved from the Reade street house, now a blacksmith shop.

Cornelius B. sold clay from a clay pit, situate betwixt Reade and what is now called Thomas street, and near Hudson street. His claim to it was notorious, and it was always talked that it belonged to him, and no one disputed it. He made them pay a shilling a load for it, and sued some who did not pay, and collected from them.

Dominie's Hook and Dominie's Bowery were spoken of as two distinct pieces of land; she cannot say which [691] was the sixty-two acre piece. She was shown by her father-in-law a part of the lands called by those names which he and others claimed as heirs of Anneke Jans, all the land along the river northerly of Warren street, where Greenwich and Hudson streets now run, including Lispenard's place, and all others west of what is now West Broadway. That this land lay open and vacant, and but little of it besides Lispenard's was fenced in; and she heard from Cornelius B. and others that he had plowed and raised a quantity of wheat on a field, part of that land, before the Revolution, and just as he was going to reap it some persons broke into the field and destroyed it.

Several persons were put into possession of parcels of that land by Cornelius B., viz.: William Harris, Abraham Delamater, John Duffie, John Smith, John Johnson, Michael Sanford, and Amos La Farge. Cornelius B. was absent from the city all the war. At the peace, he came to live with La Farge as a boarder. All these persons paid rent to Cornelius B., while deponent was there on a visit, and was living in the houses in Reade street; and the receipt of rents from them was spoken of by him in her presence. The houses so let by him, were small wooden houses of no great value.

Cornelius B. put his brother Lewis into possession as his tenant, of a house and lot, near and perhaps on what is now Hudson or St. John's square. It was a slightly built house called a possession house, and surrounded by a fence, inclosing as much land as is now in that square or more. Cornelius B. claimed this as his, and took possession of it as part of the tract called Dominie's Hook and Dominie's Bowery. Lewis Bogardus kept possession of it as such tenant, for six or seven months, and as deponent believes, until about the time Cornelius B. left the city, which was in 1786 or 1787, as she believes. Deponent used very often to visit Lewis B. in that house, then called the possession house, and he never was disturbed in the possession of the house or lot, but occupied both quietly and peaceably, without interruption from any person, but his wife was afterwards turned out. Cornelius B. said his taking possession of that piece of land, was the same as taking posses- [692] sion of the whole land which the heirs claimed as heirs of Anneke Jans.

That a Mrs. Broad entered upon and took possession of a piece of ground, near North Moore street, called the Fort, claiming to own it as one of those heirs. There was a sort of breastwork and trench, and a house within it. She drove away people who came to take earth from the banks of the fort, by throwing boiling water on them. She kept possession undisturbed, from the time the British left till 1787 or 1788, claiming as such heir. She claimed all the land outside of the fort and along the river above and below. There was several instances of open controversy between the church and her father-in-law, after the peace. He set up a fence near Provost street, inclosing may be 100 feet square to take possession of the whole tract and show his claim of title; and after it had stood several days, some persons tore it down and burnt the fence boards. The church party after this built a fence on the vacant land, and this was burnt by the Bogardus party. This was in the day time, many were engaged in the conflict that ensued, great violence was used and the church party finally drove the other off, the recorder of the city being there as it was said, to assist the church party. In one of these quarrels, some of Cornelius B.'s men were taken up

by the city government and he became bail for them, but they were never punished.

Lewis Bogardus's wife was with force put out of the house he held, in his absence, with her children and furniture, by men who said they did it under authority of Trinity Church.

Cross-examined, the witness testified, the Dominie's Bowery and Dominie's Hook composed one parcel of land as she has always understood, and lay between Broadway and the North river, bounded on the south by the north line of Warren street, north by the south side of Duane street as far as Chapel street, then went up Chapel nearly to Beach street, then took a turn and came back to Chapel, then went up to a little above Laight street, then to Greenwich street, and up that street to a stone bridge where [693] Canal street now is, and then ran to the river. The Bowery or Hook did not include Lispenard's farm. All her information about this is derived from her father-in-law and his family.

She has not known or heard of any possession by Cornelius B. or any of his family, of any part of the Church Farm, since he removed from New York in 1786.

Re-examined, she say she heard the church gave her father-in-law £650 for giving up his right. This she heard from his sons, and it was the general talk in the family. He was poor and soon spent all that money.

Mary Bogardus testified, November 19, 1841, that she is seventy-three years old, and is the widow of James C. Bogardus. She moved with him into the city of New York, in April, 1786. They first lived in a house at the corner of Broadway and Chambers streets. The house was her father-in-law's, Cornelius C. Bogardus, who, with his family, and the family of his son Henry, lived in the house. In the winter following, Cornelius B. moved into the country. Henry and James and their families remained in the house till the following May. They lived [697] there quietly and peaceably, and no one called for rent that she knew of. She never heard Cornelius B. say the house belonged to him, or that the church or any one else claimed it against him. He lived in it and she thought it was his. She never saw the gravel hill at the foot of Chambers street but has heard him say he had sold gravel from it. A person at the sand or clay hill sold the gravel and kept an account of it, and gave accounts of it to her father-in-law. Never saw him pay any money to the latter. Deponent heard of the possession house, and of Lewis Bogardus being put in possession of it, on a hill near Lispenard's. She has heard of a fence being burned down near the possession house; this was the year before she went to the city. Lewis B. was not in the possession house long. When deponent and her husband left the corner of Chambers street, they lived six months in a house in Warren street, near Broadway, and then a year and a half in Broadway, a few doors below Chambers street. They then removed to the country. She never heard of the claim of the heirs of Anneke Jans to the property of the church while she lived in New York, nor until of late years. Her father-in-law was always called the heir of Anneke Jans. She never heard his right to the house he lived in, or to sell the gravel disputed.

Cross-examined.—The gravel hill was an open common. Isaac Bush, the brother-in-law of Cornelius B., was the man who sold the gravel. He lived with Cornelius B., and acted for him. She does not know who claimed the land in and about Warren street while she lived in the city, nor that it was possessed by tenants of Trinity Church, or claimed by the church. The possession lot was inclosed by a high fence; was a large lot and used for a pasture, as she heard. She cannot say who went into the house, corner of Chambers street, when they left it. No rent was demanded of any of the Bogardus's while they lived there. Lewis B. left the possession house before deponent removed from the corner of Chambers street. She does not know who occupied it after Lewis B. left it. She has heard of a large piece of land called the Church Farm, whilst or since she lived in New York. She knows nothing of its [698] bounds or extent; and does not know that any part of it was claimed by Anneke Jans; but Cornelius C. Bogardus claimed the Dominie's Hook as such heir, against the church, and also other land towards the battery.

Margaret Driemer testified November 18th, 1841, she was 83 years of age in June, 1841. When she was seventeen she removed to New York with her father. A year after, she married Dr. Abram Teller, and moved to the upper end of Warren street, close by the Presbyterian meeting house near the Park, two doors from Broadway on the north side; lived there a year; then two years and a half in Slaughter-house street; then a year by the Battery gate; then a year in Chatham Row in lawyer Jones's house by the iron-handle pump. Were there when the American troops came into New York and the English evacuated the city. She and her husband then moved into a house he hired of lawyer De Hart, as agent of widow Brewinton, on the corner of Broadway, the west side, opposite the negro burying-ground. The street run down to the river, but did not cross Broadway. In front of it were the red barracks behind the old jail. Cornelius Bogardus lived on the opposite corner from deponent, in a pretty old wooden house. Deponent lived there 2½ to 3 years, and Cornelius B. lived there when she moved away. He claimed to own [695] the house and lot he lived in. Deponent does not know under what title. She heard him and one Sackett talk about it. He said at that time, he would sell gravel from the hill at the foot of that street, and that he had sold gravel from there. Rails were brought down the river, and a fence built around a large tract, inclosing the gravel hill and the possession house. The fence was soon after torn down and the rails burnt on the ground. After this Bogardus said the possession house belonged to him and the other heirs, and was built to keep their possession. The people that burnt the fence were in uniform, or were disguised, and had sticks, but no arms. It was done about ten in the evening, about two years after the evacuation of the city.

Lawyer Sackett published a book about the title of the heirs to the property in possession of Trinity Church, and the heirs came down from the country, said they would go to law about it, and then the heirs put up this fence.

Cross-examined.—My husband, Dr. Teller, was one of the Bogardus heirs. The house hired of De Hart, she understood belonged to widow Brewinton; but she does not know how Mrs. B. got it. It was a part of what was called the Church Farm. Deponent's husband paid the rent of the house to De Hart, before the dispute took place. The reason it was not paid afterwards was, that the heirs told Dr. Teller not to pay it, because the property belonged to the Bogardus's heirs. Our goods were distrained for rent and replevied. The rent was never paid or called for after that to my knowledge. De Hart came and wanted the house given up to Mrs. B., which was refused, but Dr. Teller said he was going into the country, and she might then have possession. He moved out and delivered up the key. The

house Cornelius B. lived in, was a part of the Church Farm, which, as deponent always understood, extended up Broadway, crossed over to Lispenard's brewery, and then up the North river to Bayard's. After the fence was burned, the church and the Bogardus heirs went to law, and were in law when deponent removed from the city.

John Rugar testified, November 19th, 1841, that [696] he was ninety years of age. That he and his wife went to the city of New York to live, in 1785, lived a year in Murray street, and next lived a year at the corner of Warren and Chapel streets. Then moved into a house in Warren street, called Vauxhall, near the river, on the east side of the road leading up to Greenwich, and lived there three years. The second year, he thinks, after he went to New York, he saw a fence building, east of the old furnace, along the east side of Greenwich road, running up from Vauxhall and off in an easterly direction. The fence was cut down and burned the evening of the day it was put up. Deponent did not know any of the men concerned in or directing, either the building or destroying the fence. He knew a Mr. Bogardus in those times, but did not know where he lived.

Cross-examined, the witness testified, he understood the land about Vauxhall belonged to Trinity Church. Does not know the extent of the land of which this was said. Vauxhall was a large inclosure; was not then used as a garden, but was afterwards. There was a pottery on it then. Deponent hired one room there, of a man who hired the whole of Vauxhall, and let out the rooms. The ground inclosed by the fence he saw built, was vacant ground, beyond which and towards Lispenard's, there was several houses. Lispenard's brewery was on the road near the river; his house was off to the east, on the same side of the road with the brewery. All the land beyond Lispenard's, was inclosed with fences up to the place where the old state prison was. The fence that was cut down and burnt, was never put up again as deponent knows, and believes.

George W. Chapman, testified, August 9th, 1842, that he is eighty-one years of age. He came to this city in 1790, and resided in Greenwich street. He knew an old woman who lived in an old redoubt, and she lived there until she was dug away, when she made a compromise. This was not earlier than 1793, or later than 1795. Old Mr. Thomas Barrow was there and represented the church. The old woman defended herself with hot water against those who came to dig her out. Deponent advised her to hold on her possession until she could get something for it because he thought it was in the way of opening Greenwich street.

The land bounded south by Chambers street, west by the river, north by what is now Canal street, and east by what is now West Broadway, was nearly the whole of it enclosed. Does not recollect any of it that was uninclosed, except the part west of Greenwich street, which was open.

Cross-examined.—The witness testified, that the redoubt was nearly at the foot of Chambers or of Reade streets in the neighborhood of that, and he believes about one-half of it was on what is now Greenwich street. It was not large; was sixty yards inside, perhaps eighty. His impression is, that the object of digging away the redoubt, was to open Greenwich street. He then thought the dispute was between Mrs. Broad and the city corporation; he understood afterwards, it was her and Trinity Church. He knows nothing of any compromise between them, except by common report. He never heard, either from her, or how she claimed, or that she claimed under the same right as the Bogarduses'. The dispute between her and Trinity Church, as he heard afterwards, was about the claims of the Bogardus family for property held by the church. (The three last answers were on the complainant's examination.) There was a brewery on the west side of Greenwich street, called Rhinelander's, he thinks; this was above Duane, and perhaps above Jay or Harrison streets. [699] On the east side of Greenwich road was Spader's oil mill. Does not recollect any other building above that, at that time, till they came to Lispenard's.

From the Humbert vs. Trinity case.

Alas for the truth, integrity and Christian spirit of this church! Four years after the 4 Sandford case was commenced, in June 1834, the case of Humbert against Trinity Church was started, and ultimately decided via the adverse possession road in December, 1840. This case is reported in 24 Wendell, page 587.[7] If the copy of the Lovelace transcript had been furnished to the agents for the heirs, in 1785, why does this statement appear at page 599 of that record:

This brings us to the year 1785, down to which time, notwithstanding the disadvantages under which the Bogardus, heirs labored, several among them, including one Cornelius Bogardus, kept possession of large portions of their land, claiming title for themselves and their co-heirs. The bill characterizes these encroachments at every step as wrongful, the defendants being fully aware that they were acting illegally, and having in view their original design.

So far there is no dispute that they proceeded with an adverse claim of title, and took such a possession as would have constituted a bar by the statute of limitations, had it continued for twenty years, and not been qualified with the imputed scienter of wrong and fraud.

This brings us to the deed from Cornelius Bogardus to the defendants, which is much relied on as changing the relation of the parties from that of enemies to friends—from that of adverse holders to tenants in common. **Cornelius was a common proprietor of the land in dispute, and stood foremost among those descendants of Anneke Jans Bogardus, who had sturdily opposed the encroachments. He (says the bill) had tenants, and divers portions in fence, and was therefore a prominent object of persecution for years, both before and after the American revolution. His fences were prostrated in the night and burnt by numerous parties of men acting for the church, and who turned in their cattle and devoured his crops. Thus he suffered long and severely; and being poor, was successfully assailed with an offer of £700, in consideration of which he granted and conveyed to the defendants, who claim that their title under such grant is good and valid. He giving way, the defendants were let into the general and unrestrained possession of large portions of the land. The bill charges that the defendants offered the £700 by way of purchasing Cornelius' birthright; and that taking the deed and being let into possession, they by this means became seized and possessed as tenants in common, and in this manner and relation they continued to occupy till the filing of the bill in 1834, inasmuch as no subsequent event or occurrences happened to change in that respect the character of their possession.**

The allegation, however, almost immediately follows, that the defendants' conduct has since been such in regard to that deed as to indicate the unfairness of their original design. That they have been cautious in its exhibition, refused to record it, and generally kept it in profound secrecy, affecting even to doubt its existence, fearing that the heirs might claim it as an admission of a tenancy in common.

In truth, the great reason for obtaining the deed was a pending proceeding before the legislature to question their title. They therefore obtained and exhibited it to the legislature as covering a part of the Duke's farm—in other words, their own farm. That excepting this and the production of the deed in 1807, in defending themselves against a claim by some of the Bogardus heirs, they have uniformly concealed the deed, and affected to hold the lands as if none had been received.

Why recognize the Bogardus title by the payment of this seven hundred pounds? Why burn his fences? Why attack him, if the title to this farm had passed by this transcript, and why reward him for trespass on something to which he had no title? The charges in the Humbert case were admitted by the demurrer. What becomes of the oft-repeated statement, the sing song which has accompanied possession by this property of Trinity, that it has had uninterrupted possession under the Queen Anne Grant from 1705? Why was Trinity Church admitting in this case that it had paid seven hundred pounds to Bogardus in the year 1785, if the Bogardus family had, in the year 1670/71 conveyed to Lovelace, and thence via a judicial inference and legal presumption to the Crown. This runs counter to the very provisions and laws of the colony, that a conveyance of an inheritance can only be made in writing, duly acknowledged and signed.

In the face of all these facts you have this religious octopus admitting by this demurrer that it had paid seven hundred pounds when force, sticks, stones, fire and what not had failed to remove this Revolutionary patriot from the possessions coveted by this religious exponent of torrism.

If this admitted fact in this case be true, how is it that Trinity Church has broadcasted to the humiliation and scorn of this family, the claim that she had been in peaceful enjoyment and uninterrupted possession of the Bogardus property from the time of the Queen Anne Grant. Is this honest?

Was this conscience money? Or, was it charity—ah, but charity covereth a multitude of sins; suffereth long and is kind; seeketh not her own; thinketh no evil; rejoiceth in the truth. It puts me much in mind of that wonderful book by Hall Caine "The Christian." The Prime Minister told John Storm the church was the pillar of the state, and John Storm answered "The caterpillar, you mean, eating out its heart and its vitals." Think, think my friend what Trinity Church did to this patriotic little family! Jesus resented the brand of religion practiced by those to whom the clinking of silver and gold was more musical than the chanting of the psalms, just as he must resent this misnomer of the Trinity which persecuted to the point of abject humiliation this family of Bogardus, as well as those who seek to put that name in its proper place in the American escutcheon.

Thirty-two Acres.

If all that has been said, will not convince you that the children of Anneke Jans Bogardus were, in a strict sense, robbed of their inheritance, then will one of Trinity's own Rectors convince you?

In part I, of the History of Trinity Parish, compiled by order of the corporation of Trinity Church, and edited by one Morgan Dix, the Ninth Rector of Trinity Church, at page 145, we find the following:

"There is no further record of parochial affairs until February 19, 1703, when 'It being moved which way the King's Farm, which is now vested in Trinity Church, should be let to farm, it was unanimously agreed, that the Rector and Church Wardens should wait upon my Lord Cornbury, the Governor, to know what part thereof his Lordship did design towards the College which his Lordship designs to have built and thereupon to publish placards for the letter thereof at the public outcry to the righest bidder.'"

*2. Records I, 43. At this period we find Morris joining with Heathcote in advocating the foundation of a college. Morris writes "The Queen has a farm of about thirty-two acres of land, which rents for thirty-six pounds per annum; Tho the church wardens have petitioned for it, and my Lord four months since gave you promise of it, the proceedings has been so slow that they begin to fear the success wont answer the expectation. I believe her Majesty would readily grant it to the society for the asking. N. York is the centre of English America and an appropriate place for a College, and that farm in a little time would be of considerable value, and it is a pity such a thing would be lost for want of asking, which at another time wont be so easily obtained." Archives, S. P. G. I, 171."

Vol. IV. Page 573:

William Morris, Vestryman from 1697 to 1704.
Col. Caleb Heathcote. Vestryman from 1697-1699 and also 1711-1714.

At Page 184: About the year 1710-14:

"To proceed to another controverted question: that of the maintenance of the ministry in New York. The salary for the minister named in the Act of 1693 was provided for in that Act, but there was always more or less difficulty in carrying out its provisions. A portion of the sum allowed to the rector as his salary, was raised by taxation; but another part came from the rents derived from the "Queen's Farm." Although the title of the church to the property has been confirmed by Queen Anne the corporation felt anxiety on the subject, desiring, as appears from their records, such further action as might stop all objection to the title, and silence envious malcontents. We have seen how, at Jamaica, the collectors refused to pay the clergyman at that place, though regularly inducted; the same reluctance was exhibited from time to time in New York, with an evident disposition to nullify the Act on that point; while many felt angry that the church should be in possession of a property which might, in time, increase greatly in value, and would have gladly robbed her of her endowment and put the proceeds in their own pockets."

Does this record of parochial affairs in 1703 from the archives of Trinity Church, as published by Morgan Dix, convince you that the children of Anneke Jans were, in a strict sense, robbed of their inheritance.

Colonel Morris, a vestryman says, two years before the date of the Queen Anne grant, that King's Farm contained thirty-two acres. The Anneke Jans Bogardus tract calls for sixty-two acres, and the Jane Celes for about ninety-two acres. Five miles from Fulton Street to Christopher Street, on an original grant of thirty-two acres. And all done under the prayers of the Almighty God.

This puts me in mind of a Philadelphia Quaker yarn, I heard many years ago. It seems a little lady ran into a Quaker's house, and asked for some string to tie up a bundle. The Quaker, ever accommodating brought out his ball of string, and said to her, "Here, friend, take what thy conscience will allow thee." The lady took the string and started to measure off yard by yard, whereupon the Quaker stepped up, and taking the string from her, started to wind the string back on the ball, saying as he did so "Friend, methinks thy conscience is too long."

Why?

I wish that this book, dedicated as it is to the worthy object of seeking restitution and justice for the Bogardus descendants, would produce in the minds of my readers a pious feeling of reverence for this little family, for my heart cries aloud with a great cry, WHY, HOW, in a land consecrated to freedom and justice, the choicest gifts heaven has bestowed, has this wrongful taking been condoned for over two centuries, where all men are equal, and are endowed with inalienable rights, among those rights being, security in the enjoyment of their earthly possessions; for without that security, life is insupportable.

As the eyes of the sailor leaving port, rest, with an invocation upon his lips, on Liberty, that symbol of his country, seemingly to carry with him its blessing throughout the voyage, so would I have your eyes rest, and your mind dwell with a prayer on your lips, on this little family, whose ancestors gave their all towards that blessed estate, INDEPENDENCE. These Bogardus children are heirs to all that the Declaration of Independence portended, and have been defending that right against the most insurmountable barriers of power and influence.

Plate Forty-three-A

CHAPTER FOUR

American Period

Having reached the goal set for this volume, the dawn of the American period, the urge to speak in this emergency of one of the several major questions, relating to post-revolutionary times, will be pardoned.

State Grant.

The first constitution of the State of New York, adopted at Kingston the 20th day of April, 1777, in section thirty-six, provided as follows:

XXXVI: AND BE IT FURTHER ORDAINED, that all the grants of land within this state, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; But that nothing in this constitution contained shall be construed to affect any grants of land within this state, made by the authority of the said King or his predecessors, or to annul any charters to bodies politic, by him or them, or any of them, made prior to that day. And that none of the said charters shall be adjudged to be void by reason of any non-user or mis-user of any of their respective rights or privileges, between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the publication of this constitution. And further, that all such of the officers described in the said charters respectively, as by the terms of the said charters, were to be appointed by the governor of the colony of New York, with or without the advice and consent of the council of the said king, in the said colony, shall henceforth be appointed by the council established by this constitution, for the appointment of officers in this state, until otherwise directed by the legislature.

Circumstances necessitate limiting my discussion of this constitutional provision, to a mere reference to the case heretofore mentioned of People v. Clarke, 9 New York, 349, which held that this provision of the constitution has always been regarded as confirming the royal patents granted before the revolution.

The statement also appears in the opinion in the case:

"It was this constitution which, as respects this state, dissolved the former political institutions by which the colony was governed and organized a new sovereignty."

We have here a constitutional, confirmation of royal grants. We have here no recognition of prospective vested interests or rights founded on adverse possession. We have here only one particular class of grants protected, royal grants.

Was this a confirmation of the Governor Nicolls grant to the children and heirs of Anneke Jans Bogardus?

Was Governor Nicolls' grant within the purview of this provision of the first constitution of the State of New York?

Was this a contract between the State of New York and the children and heirs of Anneke Jans Bogardus?

The great case in American jurisprudence upon this question is the Dartmouth College case, from which excerpts are here presented:

[CONSTITUTIONAL LAW.]
THE TRUSTEES OF DARTMOUTH COLLEGE
v.
WOODWARD.
REP. 4 WHEAT. 517.

* * * * * * * * * *

1. On the first point it has been argued, that the word "contract," in its broadest sense, would comprehend the political relations between the government and its citizens, would extend to offices held within a state for state purposes, and to many of those laws concerning civil institutions, which must change with circumstances, and be modified by ordinary legislation; which deeply concern the public, and which, to preserve good government, the public judgment must control. That even marriage is a contract, and its obligations are affected by the laws respecting divorces. That the clause in the constitution, if construed in its greatest 628*] latitude, *would prohibit these laws Taken in its broad unlimited sense, the clause would be an unprofitable and vexatious interference with the internal concerns of a state, would unnecessarily and unwisely embarrass its legislation, and render immutable those civil institutions which are established for purposes of internal government, and which, to subserve those purposes, ought to vary with varying circumstances. That as the framers of the constitution could never have intended to insert in that instrument a provision so unnecessary, so mischievous, and so repugnant to its general spirit, the term "contract" must be understood in a more limited sense. That it must be understood as intended to guard against a power of at least doubtful utility, the abuse of which has been extensively felt; and to restrain the legislature in future from violating the right to property. That anterior to the formation of the constitution, a course of legislation had prevailed in many, if not in all, of the states, which weakened the confidence of man in man, and embarrassed all transactions between individuals, by dispensing with a faithful performance of engagements. To correct this mischief, by restraining the power which produced it, the state legislatures were forbidden "to pass any law impairing the obligation of contracts," that is, of contracts respecting property, under which some individual could claim a right to something beneficial to himself; and that since the clause in the constitution must in construction receive some limitation, it may be confined, and ought to be confined, to cases of this 629*] description; to cease within the mischief it was intended to remedy.

The general correctness of these observations cannot be controverted. That the framers of the constitution did not intend to restrain the states in the regulation of their civil institutions, adopted for internal government, and that the instrument they have given us is not to be so construed, may be admitted. The provision of the constitution never has been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice.

* * * * * * * * * *

Whence, then, can be derived the idea that Dartmouth College has become a public institution, and its trustees public officers, exercising powers conferred by the public

for public objects? Not from the source whence its funds were drawn; for its foundation is purely private and eleemosynary. Not from the application of those funds; for money may be given for education, and the persons receiving it do not, by being employed in the education of youth, become members of the civil government. Is 636*] it from *the act of incorporation? Let this subject be considered.

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individually; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being. But this being does not share in the civil government of the country, unless that be the purpose for which it was created. Its immortality no more confers on it political power, or a political character, than immortality would confer such power or character on a natural person. It is no more a state instrument than a natural person exercising the same powers would be. If, then, a 637*] natural person, employed *by individuals in the education of youth, or for the government of a seminary in which youth is educated, would not become a public officer, or be considered as a member of the civil government, how is it that this artificial being, created by law, for the purpose of being employed by the same individuals for the same purposes, should become a part of the civil government of the country? Is it because its existence, its capacities, its powers, are given by law? Because the government has given it the power to take and to hold property in a particular form, and for particular purposes, has the government a consequent right substantially to change that form, or to vary the purposes to which the property is to be applied? This principle has never been asserted or recognized, and is supported by no authority. Can it derive aid from reason?

* * * * * * * * * *

This is plainly a contract to which the donors, the trustees, and the crown (to whose rights and obligations 644*] New Hampshire succeeds), were the original *parties. It is a contract made on a valuable consideration. It is a contract for the security and disposition of property. It is a contract, on the faith of which real and personal estate has been conveyed to the corporation. It is then a contract within the letter of the constitution, and within its spirit also, unless the fact that the property is invested by the donors in trustees for the promotion of religion and education, for the benefit of persons who are perpetually changing, though the objects remain the same, shall create a particular exception, taking this case out of the prohibition contained in the constitution.

* * * * * * * * * *

*From the review of this charter, [*651 which has been taken, it appears that the whole power of governing the college, of appointing and removing tutors, of fixing their salaries, of directing the course of study to be pursued by the students, and of filling up vacancies created in their own body, was vested in the trustees. On the part of the crown it was expressly stipulated that this corporation, thus constituted, should continue forever; and that the number of trustees should forever consist of twelve, and no more. By this contract the crown was bound, and could have made no violent alteration in its essential terms, without impairing its obligation.

By the revolution the duties, as well as the powers, of government devolved on the people of New Hampshire. It is admitted, that among the latter was comprehended the transcendent power of parliament, as well as that of the executive department. It is too clear to require the support of argument, that all contracts, and rights, respecting property, remained unchanged by the revolution. The obligations, then, which were created by the charter to Dartmouth College, were the same in the new that they had been in the old government. The power of the government was also the same. A repeal of this charter at any time prior to the adoption of the present constitution of the United States, would have been an extraordinary and unprecedented act of power, but one which could have been contested only by the restrictions upon the legislature, to be found in the constitution of the state. But the constitution of the United States has imposed this 652*] additional limitation, *that the legislature of a state shall pass no act "impairing the obligation of contracts."

* * * * * * * * * *

According to the tenor of the charter, then, the trustees might, without impropriety, appoint a president and other professors from their own body. This is a power not entirely unconnected with an interest. Even if the proposition of the counsel for the defendant were sustained; if it were admitted that those contracts only are protected by the constitution, a beneficial interest in which is vested in the party, who appears in court to assert that interest; yet it is by no means clear that the trustees of Dartmouth College have no beneficial interest in themselves.

* * * * * * * * * *

It results from this opinion, that the acts of the legislature of New Hampshire, which are stated in the special verdict found in this cause are repugnant to the constitution of the United States; and that the judgment on this special verdict ought to have been for the plaintiffs.

* * * * * * * * * *

Washington, J. This cause turns upon the validity of certain laws of the state of New Hampshire, which have been stated in the case, and which, it is contended by the counsel for the plaintiffs *in error, are void being [*655 repugnant to the constitution of that state, and also to the constitution of the United States. Whether the first objection to these laws be well founded or not, is a question with which this court, in this case, has nothing to do; because it has no jurisdiction, as an appellate court, over the decisions of a state court; except in cases where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where

is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission.

The clause in the constitution of the United States, which was drawn in question in the court from whence this transcript has been sent, is that part of the tenth section of the first article which declares that "no state shall pass any bill of attainder, ex post facto law, or any law impairing the obligation of contracts." The decision of the State Court is against the title specially claimed by the plaintiffs in error, under the above clause, because they contend that the laws of New Hampshire, above 656*] referred to, *impair the obligation of a contract, and are, consequently, repugnant to the above clause of the constitution of the United States, and void.

There are, then, two questions for this court to decide:

1st. Is the charter granted to Dartmouth College on the 13th of December, 1769, to be considered as a contract? If it be, then, 2d. Do the laws in question impair its obligation?

1. What is a contract? It may be defined to be a transaction between two or more persons, in which each party comes under an obligation to the other, and each reciprocally acquires a right to whatever is promised by the other.[1] Under this definition, says Mr. Powell, it is obvious that every feoffment, gift, grant, agreement, promise, etc., may be included, because in all there is a mutual consent of the minds of the parties concerned in them, upon an agreement between them respecting some property or right that is the object of the stipulation. He adds, that the ingredients requisite to form a contract, are parties, consent, and an obligation to be created or dissolved; these must all concur, because the regular effect of all contracts is on one side to acquire and on the other to part with, some property or rights; or to abridge, or to restrain natural liberty, by binding the parties to do, or restraining them from doing, something which before they might have done, or omitted. If a doubt could exist that a grant is a contract, the point was decided 657*] in case of Fletcher v. Peck,[2] *in which it was laid down that a contract is either executory or executed; by the former, a party binds himself to do or not to do a particular thing; the latter is one in which the object of the contract is performed, and this differs in nothing from a grant; but whether executed or executory, they both contain obligations binding on the parties, and both are equally within the provisions of the constitution of the United States, which forbids the state governments to pass laws impairing the obligation of contracts.

If, then, a grant be a contract, within the meaning of the constitution of the United States, the next inquiry is, whether the creation of a corporation by charter be such a grant as includes an obligation of the nature of a contract, which no state legislature can pass laws to impair.

A corporation is defined by Justice Blackstone[3] to be a franchise. "It is," says he, "a franchise for a number of persons, to be incorporated and exist as a body politic, with a power to maintain perpetual succession, and to do corporate acts, and each individual of such corporation is also said to have a franchise, or freedom." This franchise, like other franchises, is an incorporeal hereditament, issuing out of something real or personal, or concerning or annexed to, and exercisable within a thing corporate. To this grant, or this franchise, the parties are, the king, and the persons for whose benefit it is created, or trustees for them. The assent of both is necessary. The 658*] *subjects of the grant are not only privileges and immunities, but property, or which is the same thing, a capacity to acquire and to hold property in perpetuity. Certain obligations are created, binding both on the grantor and the grantees. On the part of the former, it amounts to an extinguishment of the king's prerogative to bestow the same identical franchise on another corporate body, because it would prejudice his prior grant.[4] It implies, therefore, a contract not to reassert the right to grant the franchise to another, or to impair it. There is also an implied contract, that the founder of a private charity, or his heirs, or other persons appointed by him for that purpose, shall have the right to visit, and to govern the corporation, of which he is the acknowledged founder and patron, and also, that in case of its dissolution, the reversionary right of the founder to the property, with which he had endowed it, should be preserved inviolate.

The rights acquired by the other contracting party are those of having perpetual succession, of suing and being sued, of purchasing lands for the benefit of themselves and their successors, and of having a common seal, and of making by-laws. The obligation imposed upon them, and which forms the consideration of the grant, is that of acting up to the end or design for which they were created by their founder. Mr. Justice Buller, in the case of the King v. Passmore,[5] says that the grant of a corporation is a compact between the crown and a number of persons, the latter of whom undertake, in consideration *of the privileges [*659 bestowed, to exert themselves for the good government of the place. If they fail to perform their part of it, there is an end of the compact. The charter of a corporation, says Mr. Justice Blackstone,[6] may be forfeited through negligence, or abuse of its franchises, in which case the law judges that the body politic has broken the condition upon which it was incorporated, and thereupon the corporation is void.

It appears to me, upon the whole, that these principles and authorities prove, incontrovertibly, that a charter of incorporation is a contract.

* * * * * * * * * *

These corporations, civil and eleemosynary, which differ from each other so especially in their nature and constitution, may very well differ in matters which concern their rights and privileges, and their existence and subjection to public control. The one is the mere creature of public institution, created exclusively for the public advantage, without other endowments than such as the king or government may bestow upon it; and having no other founder or 661*] visitor than the king or government, the fundator incipiens. *The validity and justice of its laws and constitution are examinable by the courts having jurisdiction over them; and they are subject to the general law of the land. It would seem reasonable that such a corporation may be controlled, and its constitution altered and amended by the government, in such manner as the public interest may require. Such legislative interferences cannot be said to impair the contract by which the corporation was formed, because there is in reality but one party to it, the trustees or governors of the corporation being merely the trustees for the public, the cestui que trust of the foundation. These trustees or governors have no interest, no privileges or immunities, which are violated by such interference, and can have no more right to complain of them than an ordinary trustee, who is called upon in a court of equity to execute the trust. They accepted the charter for the

public benefit alone, and there would seem to be no reason why the government, under proper limitations, should not alter or modify such a grant at pleasure.

* * * * * * * * * *

It has been shown that the charter is a contract on the part of the government, that the property with which the charity is endowed shall be forever vested in a certain number of persons, and their successors, to subserve the particular purposes designated by the founder, and to be managed in a particular way. If a law increases or diminishes the number of the trustees, they are not the persons which the grantor agreed should be the managers of the fund. If it appropriate the fund intended for the support of a particular charity to that of some other charity, or to an entirely different charity, the grant is in effect set aside, and a new contract substituted in its place; thus disappointing completely the intentions of the founder, by changing the objects of his bounty. And can it be seriously contended that a law which changes so materially the terms of a contract does not impair it? In short, does not every alteration of a contract, however unimportant, even though it be manifestly for the interest of the party objecting to it, impair its obligation? If the assent of all the parties to be bound by a contract be of its essence, how *is it possible that a new contract, substituted for, or [*663 engrafted on another, without such assent, should not violate the old charter?

* * * * * * * * * *

If these principles, before laid down, be correct, it cannot be denied that the obligations of the charter to Dartmouth College are impaired by the laws under consideration. The name of the corporation, its constitution and government, and the objects of the founder, and of the grantor of the charter, are totally changed. By the charter, the property of this founder was vested in twelve trustees, and no more, to be disposed of by them, or a majority, for the support of a college, for the education and instruction of the Indians, also of the English youths, and others. Under the late acts, the trustees and visitors are different; and the property and franchises of the college are transferred to different and new uses, not contemplated by the founder. In short, it is most obvious that the effect of these laws is to abolish the old corporation, and to create a new one in its stead.

* * * * * * * * * *

It is admitted that the state legislatures have *power to 694*] enlarge, repeal, and limit the authorities of public officers in their official capacities, in all cases, where the constitutions of the states respectively do not prohibit them; and this, among others, for the very reason that there is no express or implied contract, that they shall always, during their continuance in office, exercise such authorities. They are to exercise them only during the good pleasure of the legislature. But when the legislature makes a contract with a public officer, as in the case of a stipulated salary for his services, during a limited period, this, during the limited period, is just as much a contract, within a purview of the constitutional prohibition as a like contract would be between two private citizens. Will it be contended that the legislature of a state can diminish the salary of a judge holding his office during good behavior? Such an authority has never yet been asserted to our knowledge. It may also be admitted that corporations for mere public government, such as towns, cities and counties, may in many respects be subject to legislative control. But it will hardly be contended that, even in respect to such corporations, the legislative power is so transcendent that it may at its will take away the private property of the corporation, or change the uses of its private funds acquired under the public faith. Can the legislature confiscate to its own use the private funds which a municipal corporation holds under its charter, without any default or consent of the corporators? If a municipal corporation be capable of holding devises and legacies to charitable uses (as many municipal corporations are), *does the legislature, under our forms of limited gov- [*695 ernment, possess the authority to seize upon those funds, and appropriate them to other uses, at its own arbitrary pleasure, against the will of the donors and donees? From the very nature of our governments, the public faith is pledged the other way; and that pledge constitutes a valid compact; and that compact is subject only to judicial inquiry, construction, and abrogation. This court have already had occasion, in other causes, to express their opinion on this subject; and there is not the slightest inclination to retract it.[1]

* * * * * * * * * *

The truth is, that the government has no power to revoke a grant, even of its own funds, when given to a private person, or a corporation for special uses. It cannot recall its own endowments granted to any hospital, or college, or city, or town, for the use of such corporations. The only authority remaining to the government is judicial, to ascertain the validity of the grant, to enforce its proper uses, to suppress frauds, and, if the uses are charitable, to secure their regular administration through the means of equitable tribunals, in cases where there would otherwise be a failure of justice.

* * * * * * * * * *

The truth, however, is, that all incorporeal hereditaments, whether they be immunities, dignities, offices, or franchises, or other rights, are deemed valuable in law. The owners have a legal estate and property in them, and legal remedies to support and recover them in case of any injury, obstruction, or disseizin of them. Whenever they are the subjects of a contract or grant, they are just as much within the reach of the constitution as any other grant. *Nor is [*700 there any solid reason why a contract for the exercise of a mere authority should not be just as much guarded as a contract for the use and dominion of property. Mere naked powers, which are to be exercised for the exclusive benefit of the grantor, are revocable by him for that very reason. But it is otherwise where a power is to be exercised in aid of a right vested in the grantee. We all know that a power of attorney, forming a part of a security upon the assignment of a chose in action, is not revocable by the grantor. For it then sounds in contract and is coupled with an interest.[1] So, if an estate be conveyed in trust for the grantor, the estate is irrevocable in the grantee, although he can take no beneficial interest for himself. Many of the best settled estates stand upon conveyances of this nature; and there can be no doubt that such grants are contracts within the prohibition in question.

* * * * * * * * * *

On one occasion, a very able court held that the state legislature had no authority to compel a person to become a member of a mere private corporation created for the promotion of a private enterprise, because every man had a right to refuse a grant.[8] On another occasion the same learned court declared, that they were all satisfied that the rights legally vested in a corporation cannot be controlled or destroyed by any subsequent statute unless a power for that purpose be reserved to the legislature in the act of incorporation.[9] These principles are so consonant with

justice, sound policy, and legal reasoning, that it is difficult to resist the impression of their perfect correctness. The application of them, however, does not, from our limited authority, properly belong to the appellate jurisdiction of this court in this case.

* * * * * * * * * *

If these are not essential changes, impairing the rights and authorities of the trustees, and vitally affecting the interests and organization of Dartmouth College under its old charter, it is difficult to conceive what acts, short of an unconditional repeal of the charter, could have that effect. If a grant of land or franchises be made to A, in trust for special purposes, can the grant be revoked, and a new grant thereof be made to A, B, and C, in trust for the same purposes, without violating the obligation of the first grant? If property be vested by grant in A and B, for the use of a college, or a hospital, of private foundation, is not the obligation of that grant impaired when the estate is taken from their exclusive management, and vested in them in common with ten other persons? If a power of appointment be given to A and B, is it no violation of their right to annul the appointment, unless it be assented to by five other persons, and then confirmed by a distinct body? If a bank, or insurance company, by the terms of its charter, be under the management of directors, elected by the stockholders, would not the *rights acquired by the [*712 charter be impaired if the legislature should take the right of election from the stockholders, and appoint directors unconnected with the corporation? These questions carry their own answers along with them. The common sense of mankind will teach us that all these cases would be direct infringements of the legal obligations of the grants to which they refer; and yet they are, with no essential distinction, the same as the case now at the bar.

* * * * * * * * * *

[*CONSTITUTIONAL LAW]
GREEN ET AL V. BIDDLE.
REP. 8 WHEAT 1

Mr. Justice Story delivered the opinion of the court:

*The first question certified from the [*11 Circuit Court of Kentucky, in this cause, is, whether the acts of Kentucky, of the 27th of February, 1797, and of the 31st of January, 1812, concerning occupying claimants of land, are unconstitutional.

This question depends principally upon the construction of the seventh article of the compact made between Virginia and Kentucky, upon the separation of the latter from the former state, that compact being a part of the constitution of Kentucky. The seventh article declares "that all private rights and interests of lands within the said district, derived from the laws of Virginia, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in this state."

We should have been glad, in the consideration of this subject, to have had the benefit of an argument on behalf of the tenant; but as no counsel has appeared for him, and the cause has been for some time before the court, it is necessary to pronounce the decision, which, upon deliberation, we have formed.

As far as we can understand the construction of the seventh article of the compact contended for by those who assert the constitutionality of the laws in question, it is that it was intended to secure to claimants of lands their rights and interests therein by preserving a determination of their titles by the laws under which they were acquired. If this be the true and only import of the article, it is a mere nullity; for, by the general principles of law, and from the necessity of the case, titles to *real estate can be determined only by [*12 the laws of the state under which they are acquired. Titles to land cannot be acquired or transferred in any other mode than that prescribed by the laws of the territory where it is situate. Every government has, and from the nature of sovereignty must have, the exclusive right of regulating the descent, distribution and grants of the domain within its own boundaries; and this right must remain until it yields it up by compact or conquest. When once a title to lands is asserted under the laws of a territory, the validity of that title can be judged of by no other rule than those laws furnish in which it had its origin; for no title can be acquired contrary to those laws; and a title good by those laws cannot be disregarded by a departure from the first principles of justice. If the article meant, therefore, what has been supposed, it meant only to provide for the affirmation of that which is the universal rule in the courts of civilized nations, professing to be governed by the dictates of law.

Besides, the titles to lands can, in no just sense, in compacts of this sort, be supposed to be separated from the rights and interests in those lands. It would be almost a mockery to suppose that Virginia could feel any solicitude as to the recognition of the abstract validity of titles, when they would draw after them no beneficial enjoyment of the property. Of what value is that title which communicates no right or interest in the land itself? or how can that be said to be any title at all which cannot 13*] be asserted in a court of justice *by the owner, to defend or obtain possession of his property?

The language of the seventh article cannot, in our judgment, be so construed. The word title does not occur in it. It declares, in the most explicit terms, that all private rights and interests of lands derived from the laws of Virginia, shall remain valid and secure under the laws of Kentucky, and shall be determined by the laws then existing in Virginia. It plainly imports, therefore, that these rights and interests, as to their nature and extent, shall be exclusively determined by the laws of Virginia, and that their security and validity shall not be in any way impaired by the laws of Kentucky. Whatever law, therefore, of Kentucky, does narrow these rights and diminish these interests, is a violation of the compact, and is consequently unconstitutional.

* * * * * * * * * *

The seventh article of the compact meant to secure all private rights and interests derived from the laws of Virginia, as valid and secure under the laws of Kentucky, as they were under the then existing laws of Virginia. To make those rights and interests so valid and secure, it is essential to preserve the beneficial proprietary interest of the rightful owner in the same state in which they were, by the laws of Virginia, at the time of the separation. If the legislature of Kentucky had declared by law that no person should recover lands in this predicament, unless upon payment, by the owner, of a moiety, or of the whole of their value, it would be obvious that the former rights and interests of the owner would be completely extinguished pro tanto. If it had further provided that he should be compelled to sell the same at *one-half or one-third [*17 of their value, or compelled to sell, without his own consent, at a price to be fixed by others, it would hardly be doubted that such laws were a violation of the compact. These cases may seem strong; but they differ not in the nature, but in the degree only of the wrong inflicted on

the innocent owner. He is no more bound by the laws of Virginia to pay for improvements which he has not authorized, which he may not want, or which he may deem useless, than he is to pay a sum to a stranger for the liberty of possessing and using his own property according to the rights and interests secured to him by those laws. It is no answer that the acts of Kentucky, now in question, are regulations of the remedy, and not of the right to lands. If those acts so change the nature and extent of existing remedies, as materially to impair the rights and interests of the owner, they are just as much a violation of the compact as if they directly overturned his rights and interests.

It is the unanimous opinion of the court that the acts of 1797 and 1812 are a violation of the seventh article of the compact with Virginia, and therefore are unconstitutional. This opinion renders it unnecessary to give any opinion on the second question certified to us from the Circuit Court.[1]

* * * * * * * * * *

JEFFERSON BRANCH BANK vs. SKELLY

1 Black 436 (U. S. 66) decided 1861

This court's view of that clause of the constitution in its application to the states, is now, and ever has been, that state legislatures, unless prohibited in terms by state constitutions, may contract, by legislation, to release the exercise of taxing a particular thing, corporation or person, as that may appear in its act, and that the contrary has not been opened to inquiry or argument in the supreme court of the United States.

* * * * * * * * * *

That a municipal corporation, in which is vested some portion of the administration of the government, may be changed at the will of the legislature; but that a bank, in which stock is held by individuals, is a private corporation, and its charter is a legislative contract.

* * * * * * * * * *

That the fact, that the people of the State of Ohio had, in the year .... adopted a new constitution, in which it was declared that taxes should be imposed upon banks in the manner provided for by the act of the thirteenth April, 1852, cannot be applied to the State Bank of Ohio, or its branches, without a violation of the contract contained in the Charter of 1845. Having now noticed every essential point made in the argument in support of a claim, to subject the bank of the State of Ohio and its branches to a higher rate of taxation, than that stipulated in its charter, we will close this opinion in the language of the Chief Justice in Knoop's case: "I think, that by the 60th Section of the Act of 1845, the State of Ohio bound itself by a contract to levy no higher tax than the one there mentioned, upon the banks or stocks of the banks organized under that law during the continuance of their charters."

As previously referred to, we have seen that the State of New York, by Section 36 of its first Constitution, recognized certain specific grants.

The courts of New York have construed this provision as a confirmation of these grants. No provision was made in the constitution for the recognition of any unmatured rights in property. We have shown that whatever transgressions, or attempt at possession by Trinity of this property prior to the revolutionary war, the statutory time mentioned in the Vice-Chancellor's report, to-wit: sixty, aye, even twenty-five years had not expired, as to any of the property mentioned in any of the leases in the case, which purport to have been made on property north of the palisades.

Can there be any doubt, in these circumstances, that the constitution re-confirmed the original Nicolls' grant to the children and heirs of Anneke Jans Bogardus? What in law was the effect of this confirmation? Was it a contract on the part of the State of New York, as it was on the part of the English Crown? Did it not transfer the English grant into an American grant, a grant by the State of New York to this property, and was this not a contract direct from the possessory power.

Act of 1788

Reference is made again to the Vice-Chancellor's statement in this 4 Sandford case under review, that the statute in 1705 was sixty years, which was reduced in the year 1788 to twenty-five years.

Your attention has been called to the fact that pending the revolution, the Council of Safety had possession of what was in truth and fact the Duke's-King's-Queen's farm; that Trinity, therefore, was out of possession for years, pending the revolution; that all acquisition gained through duress, menace and resort to all other means except the law, was made secure to her by virtue of this statute of limitations, passed in the year 1788, by the legislature of the State of New York; this statute passed eleven years after the revolution; eleven years after this constitutional confirmation of the grant to the children and heirs of Anneke Jans Bogardus; eleven years after the State of New York entered into that contract, solemnly pledging and re-affirming the title of this farm to the Bogardus family.

CHAP. XLIII.

AN ACT FOR THE LIMITATION OF CRIMINAL PROSECUTIONS AND OF ACTIONS AND SUITS AT LAW.

Passed 26th February, 1788.

Whereas it is necessary for the peace of society, that certain times be limited for bringing all actions and suits at law: Therefore,

I. Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That the people of the state of New-York shall not, nor will, at any time after the first day of January, which will be in the year one thousand eight hundred, sue, impeach, question or implead any person or persons, bodies politic or corporate, for or in any wise concerning any manors, lands, tenements, rents, or hereditaments whatsoever, (other than liberties or franchises) or for or in any wise concerning the revenues, issues or profits thereof, or make any title, claim, challenge or demand, of, in or to the same, or any of them, by reason of any right or title which hath not first accrued and grown, or which shall not thereafter first accrue and grow within the space of forty years next before the filing, issuing or commencing of every such action, bill, plaint, information, commission, or other suit or proceeding, as shall, at any time or times thereafter, be filed, issued or commenced for recovering the same, or in respect thereof, unless the people of the state of New-York, or some other person or persons, bodies politic or corporate, under whom the people of the State of New-York any thing have or lawfully claim, or thereafter shall have or lawfully claim, have or shall have been answered, by force and virtue of any such right or title to the same, the rents, revenues, issues, or profits thereof, or the rents, issues or profits of any manors or other hereditaments, whereof the premises in question shall be part or parcel, within the said space of forty years. And further, That all and every person or persons, bodies politic or corporate, their heirs and successors, and all claiming by,

from or under them, or any of them, for and according to their and every their several estates and interests, which they have, or claim to have, or hereafter shall or may have, or claim to have, in the same respectively, shall at all times hereafter, quietly and freely have, hold and enjoy, against the people of the state of New-York, claiming, by any title which hath not first accrued or grown, or which shall not thereafter first accrue or grow within the space of forty years, all and singular the manors, lands, tenements, rents and hereditaments whatsoever (other than liberties and franchises) which he or they, or his or their, or any of their ancestors or predecessors, or those from, by or under whom he or they do, or hereafter shall claim or have, or hereafter shall have held or enjoyed, or taken the rents, revenues, issues or profits thereof, by the space of forty years next before the filing, issuing or commencing of every such action, bill, plaint, information, commission, or other suit or proceeding, as shall, at any time or times thereafter, be filed, issued or commenced, for recovering the same, or in respect thereof, unless the people of the state of New-York, or some other person or persons, bodies politic or corporate, under whom the people of the state of New-York any thing have or lawfully claim, or hereafter shall have or lawfully claim, in the said manors, lands, tenements, rents or hereditaments, by force of any right or title, have been, or shall have been answered, by virtue of any such right or title, the rents, revenues, issues or other profits thereof, within the said space of forty years. And further, That all and every person or persons, bodies politic and corporate, their heirs and successors, and all claiming or to claim, by, from and under them, or any of them, for and according to their and every of their several estates and interests, which they have or claim, or hereafter shall or may have or claim respectively, shall forever hereafter, quietly and freely have, hold and enjoy, all such manors, lands, tenements, rents and hereditaments (other than liberties and franchises) as they now have, claim or enjoy, or hereafter shall or may have, claim or enjoy, whereof the people of the state of New-York, or he or they, by, from or under whom the people of the state of New-York any thing have or lawfully claim, or hereafter shall have or lawfully claim, or some of them, by force of some right or title to the same, have not or shall not have been answered by virtue of such right or title, the rents, revenues, issues or profits thereof, within the space of forty years next before the filing, issuing or commencing of every such action, bill, plaint, information, commission, or other suit or proceeding, as shall, at any time or times thereafter, be filed, issued or commenced, for recovering the same, or in respect thereof, within the said space of forty years, against all and every person and persons, his and their heirs and assigns, having, claiming, or pretending to have, or who shall or may have, claim, or pretend to have, any estate, right, title, interest, claim or demand whatsoever, of, in or to the same, by force or colour of any letters patent or grants, upon suggestion of concealment, or wrongful detaining, or defective titles, or by, from or under any patentees or grantees, or any letters patent or grants, upon suggestion of concealment, or wrongful detaining, or defective titles, of or for which said manors, lands, tenements, rents and hereditaments, or any of them, no verdict, judgment, decree, judicial order upon hearing, or sentence of any court, now standing in force, hath been had or given, or any such verdict, judgment, decree, judicial order upon the hearing, or sentence of court, shall hereafter be had or given, in any action, bill, plaint or information, in any court of record in this state, for or in the name of the people of the state of New-York, or for any of the said patentees or grantees, or for their or any of their heirs or assigns, within the space of forty years then last past, or within the space of forty years next before the filing, issuing or commencing of every such action, bill, plaint, information, commission, or other suit or proceeding, as shall, at any time or times hereafter, be filed, issued or commenced, for recovering the same, or in respect thereof, as aforsaid.

II. And be it further enacted by the authority aforesaid, That no person or persons shall hereafter, and before the first day of January, which will be in the year one thousand eight hundred, sue, have or maintain, any writ of right, or make any prescription, title or claim, of, to or for any manors, lands, tenements or other hereditaments, of the possession of his or their ancestor or predecessor, and declare and allege any further seisin or possession of his or their ancestor or predecessor; but only of the seisin or possession of his or their ancestor or predecessor, which hath been, or now is, or shall be seised of the said manors, lands, tenements, or other hereditaments, within sixty years next before the test of the same writ, or next before the said prescription, title or claim, so hereafter to be sued, commenced, brought, made or had.

III. And be it further enacted by the authority aforesaid, That no manner of person or persons shall hereafter, and before the said first day of January, which will be in the year one thousand eight hundred, sue, have or maintain, any writ of entry, or other writ or action upon disseisin done to any of his or their ancestors or predecessors, or any other action possessory, upon the possession of any of his or their ancestors or predecessors, for any manors, lands, tenements, or other hereditaments, of any further seisin or possession of his or their ancestor or predecessor, but only of the seisin or possession of his or their ancestor or predecessor, which was, or hereafter shall be seised of the same manors, lands, tenements, or other hereditaments, within fifty years next before the test of the original of the same writ, hereafter to be brought.

IV. And be it further enacted by the authority aforesaid, That no manner of person or persons shall hereafter, and before the said first day of January, which will be in the year one thousand eight hundred, sue, have or maintain, any action for any manors, lands, tenements, or other hereditaments, of or upon his, her or their own seisin or possession therein, above thirty years next before the test of the original of the same writ, hereafter to be brought.

V. And be it further enacted by the authority aforesaid, That no manner of person or persons shall hereafter and before the said first day of January, which will be in the year one thousand eight hundred, make or avowry or cognizance for any rent, suit or service, and allege any seisin of any rent, suit or service, in the same avowry or cognizance, in the possession of his, her or their ancestor or ancestors, predecessor or predecessors, or in his, her or their own possession, or in the possession of any other, whose estate he, she or they shall pretend or claim to have, above fifty years next before the making of the said avowry or cognizance.

VI. Provided nevertheless, and be it further enacted by the authority aforesaid, That from and after the said first day of January, which will be in the year one thousand eight hundred, no action real shall be maintained, and no avowry or cognizance shall be made, unless on a seisin or possession of the hereditaments, either of the demandant or plaintiff, or person making avowry or cognizance, or of the ancestor or predecessor of such demandant or plaintiff, or person making avowry or cognizance, within twenty-five years next

before such action brought, or avowry or cognizance made; with a saving, that no part of the time, during which the demandant or plaintiff, or person making avowry or cognizance, shall have been within the age of twenty-one years, insane, feme covert, or imprisoned, shall be taken as part of the said period of limitation of twenty-five years.

VII. And be it further enacted by the authority aforesaid, That if any person or persons do, at any time hereafter, sue any of the said actions or writs, for any manors, lands, tenements, or other hereditaments, or make any avowry, cognizance, prescription, title or claim, of or for any rent, suit, service, or other hereditaments, and cannot prove that he or they, or his or ther ancestors or predecessors, were in the actual possession or seisin of and in the same manors, lands, tenements, rents, suits, services, annuities, commons or other hereditamens, at any time or times, within the years before limited and appointed in this act, and in manner, and form aforesaid, if the same be traversed or denied by the party plaintiff, demandant or avowant, or by the party tenant or defendant, that then, and after such trial therein had, all and every such person and persons, and their heirs and successors, shall, from thenceforth, be utterly barred for ever, of all and every the said writs, actions, avowries, cognizance, prescription, title or claim, thereafter to be used, had or made, of and for the same manors, lands, tenements, hereditaments, or other the premises, or any part of the same, for the which the same action, writ, avowry, cognizance, prescription title or claim, hereafter shall be so had, sued or made.

VIII. And be it further enacted by the authority aforesaid, That all writs of formedon, and seire facias upon fines, of any manors, lands, tenements, or other hereditaments, hereafter to be brought, shall be sued and taken within twenty years next after the title and cause of action first descended or fallen, and at no time after the said twenty years.

IX. And be it further enacted by the authority aforesaid, That no person or persons shall, at any time hereafter, make any entry into any manors, lands, tenements or hereditaments, but within twenty years next after his or their right or title descended or accrued to the same; and in default thereof, such person or persons so not entering, and his, her or their heirs, shall be utterly excluded and disabled from such entry after to be made. And further, That no claim or entry of or upon any manors, lands, tenements or hereditaments, shall be a sufficient entry or claim, within the meaning of this act, unless upon such entry or claim, an action shall be commenced within one year next after the making of such entry or claim, and prosecuted with effect.

* * * * * * * * * *

Inviolability of Grant.

Were any of the rights secured by the constitutional confirmation in 1777 by the State of New York of the Governor Nicolls grant to the children and heirs of Anneke Jans Bogardus, in any way affected, and their rights thereunder impaired, by this subsequent statute of limitations, passed by the Legislature of the State of New York, in 1788, and if so, was the act of 1788 thereby rendered inoperative as violative of the Constitution of the United States, prohibiting the enactment of any law impairing the obligation of contract.

VAN HORNE'S LESSEE vs. DORRANCE,
2 Dallas, 304 (U. S. 2), Decided 1795.

What is a constitution? It is the form of government, delineated by the mighty hand of the people, in which certain first principles of fundamental laws are established. The Constitution is certain and fixed; it contains the permanent will of the people, and is the supreme law of the land; it is paramount to the power of the Legislature, and can be revoked or altered only by the authority that made it.

The life-giving principle, and the death-doing stroke must proceed from the same hand. What are legislatures? Creatures of the Constitution; they owe their existence to the Constitution; they derive their powers from the Constitution; it is their commission; and, therefore, all their acts must be conformable to it, or else they will be void. The Constitution is the work or will of the people themselves, in their original, sovereign, and unlimited capacity. Law is the work or will of the Legislature in their derivative and subordinate capacity. The one is the work of the Creator and the other of the creature. The Constitution fixes limits to the exercise of legislative authority, and prescribes the orbit within which it must move. In short, gentlemen, the Constitution is the sun of the political system, around which all the legislative, executive and judicial bodies must revolve. Whatever may be the case, in other countries, yet in this, there can be no doubt that every act of the Legislature, repugnant to the Constitution, is absolutely void.

* * * * * * * * * *

The Legislature, therefore, had no authority to make an act divesting one citizen of his freehold, and vesting it in another, without a just compensation. It is inconsistent with the principles of reason, justice, and moral rectitude; it is incompatible with the comfort, peace, and happiness of mankind; it is contrary to the principles of social alliance in every free government; and lastly, it is contrary both to letter and spirit of the constitution.

* * * * * * * * * *

We must, gentlemen, bear constantly in mind, that the present is a case of landed property; vested by law in one set of citizens, attempted to be divested, for the purpose of vesting the same property in another set of citizens. It cannot be assimilated to the case of personal property taken or used in the time of war and famine, or other extreme necessity; it cannot be assimilated to the temporary possession of land itself, on a pressing public emergency, or the spur of the occasion. In the latter case there is no change of property, no divestment of right; the title remains, and the proprietor, though out of possession for a while is still proprietor and lord of the soil. The possession grew out of the occasion, and ceases with it. Then the right of necessity is satisfied, and at an end; it does not affect the title, is temporary in its nature, and cannot exist forever. The constitution expressly declares, that the right of acquiring, possessing, and protecting property is natural, inherent, and unalienable. It is a right not ex gratia from the legislature, but ex debito from the constitution. It is sacred; for, it is further declared, that the Legislature shall have no power to add to, alter, abolish, or infringe any part of the constitution. The constitution is the origin and measure of legislative authority? It says to Legislatures, thus far you shall go and no further. Not a particle of it should be shaken; Not a pebble of it should be removed. Innovation is dangerous.

* * * * * * * * * *

Shame to American Legislation! That in England, a limited monarchy, where there is no written Constitution, where the parliament is omnipotent, and can mold the constitution at pleasure, a more sacred regard should have been paid to property, than in America, surrounded as we are with a blaze of political illumination; where the Legis-

latures are limited; where we have Republican governments; and written constitutions, by which the protection and enjoyment of property are rendered inviolable.

WHITE vs. HART

13 Wallace, 646 (U. S. 80), decided 1871.

That when the constitution of 1868 was adopted Georgia was not a state of the Union; that she had sundered her connection as such, and was a conquered territory wholly at the mercy of the conqueror, and that hence the inhibition of the states by the constitution of the United States to pass any law impairing the obligation of contracts had no application to her.

* * * * * * * * * *

The laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. Nothing can be more material to the obligation than the means of enforcement.

The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the constitution against invasion. The obligation of a contract "is the law which binds the parties to perform their agreement." It was said further that the state may modify the remedy, but not so as to impair substantial rights; and that whenever this result "is produced" the act is within the prohibition of the constitution, and to that extent void. When the contract here in question was entered into, ample remedies existed. All were taken away by the proviso in the new constitution. Not a vestige was left. Every means of enforcement was denied, and this denial, if valid, involved the annihilation of the contract. But it is not valid. The proviso which seek to work this result, is, so far as all pre-existing contracts are concerned, itself a nullity. It is to them as ineffectual as if it has no existence. Upon the question as thus presented, several eminent state Courts have expressed the same views.

*[CONSTITUTIONAL LAW.]
STURGES v. CROWNINSHIELD.
REP. 4 WHEATON 122.

* * * * * * * * * *

This was an action of assumpsit brought in the Circuit Court of Massachusetts, against the defendant as the maker of two promissory notes, both dated at New York, on the 22d of March, 1811, for the sum of $771.86 each, and payable to the plaintiff, one on the 1st of August, and the other on the 15th of August, 1811. The defendant pleaded his discharge under "An act for the benefit of insolvent debtors and their creditors," passed by the legislature of New York, the 3d day of April, 1811. After stating the provisions of the said act, the defendant's plea averred his compliance with them, and that he was discharged, and a certificate given to him the fifteenth day of February, 1812. To this plea there was a general demurrer and joinder. At the October term of the Circuit Court, 1817, the cause came on to be argued and heard on the said demurrer, and the following questions arose, to wit:

1. Whether, since the adoption of the constitution of the United States, any state has authority to pass a bankrupt law, or whether the power is exclusively vested in the Congress of the United States.

2. Whether the act of New York, passed the third day of April, 1811, and stated in the plea in this case, is a bankrupt act, within the meaning of the constitution of the United States.

3. Whether the act aforesaid is an act or law impairing the obligation of contracts, within the meaning of the constitution of the United States.

4. Whether the plea is a good and sufficient bar of the plaintiff's action.

And after hearing counsel upon the questions, the judges of the Circuit Court were opposed in opinion thereupon; and upon motion of the plaintiff's counsel, the questions were certified to the Supreme Court, for their final decision.

* * * * * * * * * *

3. This act is a law impairing the obligation of contracts, and, therefore, unconstitutional and void. A contract is an agreement to do, or not to do, a particular thing. Its obligation binds the parties to do, or not to do, the thing agreed to be done, or not done, and in the manner stipulated. Whatever relieves either party from the performance of the contract in whole or in part, impairs its obligation. It is, however, said, that if the contract is made in the state where such law exists, the parties have reference to it, and it is a part of their contract. This is a petitio principii. If the act be unconstitutional and void, the parties regarded it as such, and, of course, did not look to it as binding. A law, declaring that debtors might be discharged on paying half the sum due, or that the creditor might recover double the sum due, are alike void; or else, all contracts are at the mercy of the legislature. Legislatures act within the limits of their powers, only when they establish laws to enable parties to enforce contracts; laws to afford redress to the injured against negligence and fraud in not performing engagements; and *courts act within their proper sphere, when they confine themselves to the exposition of those contracts, and giving efficacy to the laws.

4. But even admitting this act to be constitutional as to all contracts made after it was passed, it was clearly unconstitutional and void as to all contracts then existing, as it was an act or law impairing their obligation. The first impression of any man, learned or unlearned is, that a law which discharges a contract, without an entire performance of it, impairs its obligation.

* * * * * * * * * *

Marshall, Ch. J., delivered the opinion of the court:

* * * * * * * * * *

This opinion renders it totally unnecessary to consider the question whether the law of New York is, or is not, a bankrupt law.

We proceed to the great question on which the cause must depend. Does the law of New York, which is pleaded in this case, impair the obligation of contracts, within the meaning of the constitution of the United States?

This act liberates the person of the debtor, and discharges him from all liability for any debt previously contracted, on his surrendering his property in the manner it prescribes.

In discussing the question whether a state is prohibited from passing such a law as this, our first inquiry is into the meaning of words in common use. What is the obligation of a contract? and what will impair it?

It would seem difficult to substitute words which are more intelligible, or less liable to misconstruction, than those which are to be explained. A contract is an agreement in which a party undertakes to do, or not to do, a particular thing. The law binds him to perform his undertaking, and this is, of course, the obligation of his contract. In the case at bar, the defendant has given his promissory note

to pay the plaintiff a sum of money on or before a certain day. The contract binds him to pay that sum on that day; and this is its obligation. Any law which releases a part of this obligation, must, in the literal sense of the word, impair it. Much more must a *law impair it which makes it totally invalid, and entirely discharges it.

The words of the constitution, then, are express and incapable of being misunderstood. They admit of no variety of construction, and are acknowledged to apply to that species of contract, an engagement between man and man for the payment of money, which has been entered into by these parties. Yet the opinion that this law is not within the prohibition of the constitution, has been entertained by those who are entitled to great respect, and has been supported by arguments which deserve to be seriously considered.

It has been contended, that as a contract can only bind a man to pay to the full extent of his property, it is an implied condition that he may be discharged on surrendering the whole of it.

But it is not true that the parties have in view only the property in possession when the contract is formed, or that its obligation does not extend to future acquisitions. Industry, talents and integrity, constitute a fund which is as confidently trusted as property itself. Future acquisitions are, therefore, liable for contracts; and to release them from this liability impairs their obligation.

It has been argued that the states are not prohibited from passing bankrupt laws, and that the essential principle of such laws is to discharge the bankrupt from all past obligations; that the states have been in the constant practice of passing insolvent laws, such as that of New York, and if the framers of the constitution had intended to deprive them of this *power, insolvent laws would have been mentioned in the prohibition; that the prevailing evil of the times, which produced this clause in the constitution, was the practice of emitting paper money, of making property which was useless to the creditor a discharge of his debt, and of changing the time of payment by authorizing distant installments. Laws of this description, not insolvent laws, constituted, it is said, the mischief to be remedied; and laws of this description, not insolvent laws, are within the true spirit of the prohibition.

The constitution does not grant to the states the power of passing bankrupt laws, or any other power; but finds them in possession of it, and may either prohibit its future exercise entirely, or restrain it so far as national policy may require. It has so far restrained it as to prohibit the passage of any law impairing the obligation of contracts. Although, then, the state may, until that power shall be exercised by Congress, pass laws concerning bankrupts; yet they cannot constitutionally introduce into such laws a clause which discharges the obligations the bankrupt has entered into. It is not admitted that, without this principle, an act cannot be a bankrupt law; and if it were that admission would not change the constitution, nor exempt such acts from its prohibitions.

* * * * * * * * * *

The fair, and, we think, the necessary construction of the sentence, requires, that we should give these words their full and obvious meaning. A general dissatisfaction with that lax system of legislation which followed the war of our revolution undoubtedly directed the mind of the convention to this subject. It is probable that laws such as those which *have been stated in argument, produced the loudest complaints, were most immediately felt. The attention of the convention, therefore, was particularly directed to paper money and to acts which enabled the debtor to discharge his debt otherwise than was stipulated in the contract. Had nothing more been intended, nothing more would have been expressed. But, in the opinion of the convention, much more remained to be done. The same mischief might be effected by other means. To restore public confidence completely, it was necessary not only to prohibit the use of particular means by which it might be effected, but to prohibit the use of any means by which the same mischief might be produced. The convention appears to have intended to establish a great principle, that contracts should be inviolable. The constitution therefore declares, that no state shall pass "any law impairing the obligation of contracts."

If, as we think, it must be admitted that this intention might actuate the convention; that it is not only consistent with, but, is apparently manifested by, all that part of the section which respect this subject; that the words used are well adapted to the expression of it; that violence would be done to their plain meaning by understanding them in a more limited sense; those rules of construction, which have been consecrated by the wisdom of ages, compel us to say that these words prohibit the passage of any law discharging a contract without performance.

By way of analogy, the statute of limitations, and against usury, have been referred to in argument; *and it has been supposed [*207 that the construction of the constitution, which this opinion maintains, would apply to them also, and must therefore be too entensive to be correct.

We do not think so. Statutes of limitations relate to the remedies which are furnished in the courts. They rather establish, that certain circumstances shall amount to evidence that a contract has been performed, than dispense with its performance. If, in a state where six years may be pleaded in bar to an action of assumpsit, a law should pass declaring that contracts already in existence, not barred by the statute, should be construed to be within it, there could be little doubt of its unconstitutionality.

So with respect to the laws against usury. If the law be, that no person shall take more than six per centum per annum for the use of money, and that, if more be reserved, the contract shall be void, a contract made thereafter, reserving seven per cent., would have no obligation in its commencement; but if a law should declare that contracts already entered into, and reserving the legal interest, should be usurious and void, either in the whole or in part, it would impair the obligation of the contract, and would be clearly unconstitutional.

* * * * * * * * * *

It is the opinion of the court that the act of the state of New York, which is pleaded by the defendant in this cause, so far as it attempts to discharge this defendant from the debt in the declaration mentioned, is contrary to the constitution of the United States, and that the plea is no bar to the action.

* * * * * * * * * *

MATHER AND STRONG V. BUSH
16 JOHN (N. Y.) 233.

* * * * * * * * * *

Spencer, Ch. J., delivered the opinion of the court:

A motion has been made in this case to set aside the execution, on the ground, that since the rendition of the judgment, the defendant has been duly and regularly discharged, under the Insolvent Act of this State, passed the

12th of April, 1813 (1 N. R. L., 460). It appears that the contract on which the judgment was founded was entered into in March, 1816; and that the discharge of the defendant under the Insolvent Act was granted on the 16th of August, 1817. It further appears that the parties were both citizens of this State, resident therein when the original contract was made, on which the judgment was rendered, and have ever since continued to be resident within the State.

Were it not for the decisions pronounced in the Supreme Court of the United States, at the last term, we should not hesitate, for a moment, in ordering the execution in this cause 247*] *to be set aside, as irregularly and illegally issued; and nothing but the consideration, that that court has a paramount and controlling jurisdiction in cases involving a construction of the Constitution of the United States, has induced this court to permit the question, as to the constitutionality of the Insolvent Law, to be argued. It cannot be doubted, that if the point which the present motion involves could be thrown into the form of pleading, so that a record could be made up, if this court should pronounce a judgment adverse to the claim or title set up by the plaintiff under the Constitution, a writ of error might be brought and ultimately carried to the Supreme Court of the United States. If, then, that court has pronounced judgment on the precise point arising in this case, though we have the power of disregarding it, our duty to the suitors in this court, and the respect which we feel and owe to the court of the last resort, must induce us, whatever may be our individual opinions, to surrender them up, and yield that obedience which the Constitution and laws of the United States exact of us.

In the principal case of **Sturges v. Crowninshield**, 4 Wheat., 122, the contract was entered into prior to the Act of the 3d of April, 1811; and the defendant set up in bar of the suit, a discharge from his debts under that Act; and it is not to be denied that the Act of 1811 made important changes in the insolvent system of this State. It authorized a discharge on the petition of the debtor only; whereas, before that period, the concurrence of three fourths in value of the creditors was required to give to an insolvent a discharge from the debts; and the Act of the 12th of April, 1813, requires two thirds in value of the creditors to join in a petition with the insolvent.

The Supreme Court of the United States held the discharge to be void; and so far as it attempted to discharge the defendant from the debt, that the Act of 1811 was contrary to that part of the 10th section of the 1st Article of the Constitution, which prohibits a state from passing any law impairing the obligation of contracts. The case of **M'Millan v. M'Neill**, 4 Wheat., 209, was subsequently decided. In that case, both the parties resided in South Carolina, and the debt demanded was contracted in that State. *McMillan re- [*248 moved into the State of Louisiana, where he was discharged on a **cessio bonorum**, as well his person as his property, from all debts then existing, due or owing by him. The court held that this case was not distinguishable in principle from the preceding one; and that the circumstance that the state law, under which the debt was attempted to be discharged, was passed before the debt was contracted, made no difference in the application of the principle.

We are decidedly of opinion that neither of these cases decide the question presented in this case, and that there is a material and manifest distinction between them. In the leading case, the court cautiously declare "that their opinion is confined to the case actually under consideration." This is intelligible language; and it was meant, we presume, to admonish state courts, that, notwithstanding the train of reasoning adopted in announcing the decision of that court, the court itself did not mean to express an opinion upon cases differently circumstanced. Another qualification of the opinion is not quite so obvious, that "it is confined to a case in which a creditor sues in a court, the proceedings of which the Legislature whose act is pleaded had not a right to control." It cannot be conceded that the legislative power can control the judgment of a court upon a question involving a construction of the Constitution; but, most probably, the observation had reference to the form and mode of proceeding. It is, however, unnecessary to pursue the inquiry, as the Legislature have not interposed in any way.

It has been contended, very earnestly, that it necessarily results from the two cases adjudged in the Supreme Court of the United States, that an Insolvent or Bankrupt Law of the state would be a violation of the Constitution, as impairing the obligation of contracts, if such a law discharged the debtor absolutely from his debts, notwithstanding both debtor and creditor were citizens of the state whose Legislature passed such law; and notwithstanding the contract was made after the enactment of the Insolvent or Bankrupt Law, and was to be performed within the State.

Having already observed that we bow to the supremacy of the Supreme Court of the United 249*] States, and feeling a *disposition to give a full and fair effect to their decision on this question, so far, and so far only, as we perceive they have actually decided; it would be unfit and irregular to analyze the reasoning and illustrations of that court, in the opinion delivered, any further than to show that the point now presented was not intended to be decided.

The court, very correctly, define a contract to be "an agreement in which a party undertakes to do, or not to do, a particular thing; the law binds him to perform his undertaking, and this is, of course, the obligation of his contract."

But if a law, of binding force and influence upon the contracting parties, as citizens of the same state, co-exist with the contract, which provides that if the party, "who undertakes to do, or not to do, a particular thing," shall, by misfortune, become utterly unable to perform his undertaking, and that if he shall, in a certain manner prescribed, make a fair and honest cession of all his estate, for the benefit of all his creditors, that then he shall be absolutely absolved from all his debts—is not the agreement by which he undertook to do, or not to do, a particular thing, qualified by such a law; and is there not an implied condition, that the party shall be absolved from its performance, if the event takes place which the existing law declares shall dispense with the performance of the contract according to the letter?

We think this question must be answered in affirmative; and then it necessarily results, that such an insolvent or bankrupt law, in force when the contract was made, does not, in the sense or meaning of the constitutional provision, impair the obligation of such contract. On this point, the Supreme Judicial Court of Massachusetts have unanimously expressed an opinion which commands our full assent. In the case of **Blanchard v. Russell**, 13 Mass., 16, they say, "a law which is in force when a contract is made, cannot be said to have that effect (of impairing the obligation of contracts); for the contract, being made under the law, is presumed to be made with reference to it, and the parties are legally conusant of it at the time. The contract

in such case is not impaired by the law, for the law is a part of the contract."

* * * * * * * * * *

The opinion of the Supreme Court further states, "that it is not true that the parties have in view only the property in possession when the contract is formed, or that its obligation does not extend to future acquisitions; industry, talents and integrity, constitute a fund which is as confidently trusted to as property itself; future acquisitions are, therefore, liable for contracts, and to release them from this liability impairs their obligation." These observations are exclusively applicable to the case then under consideration, in which the law was posterior to the contract under which the defendant set up, as a bar to the suit, his discharge. But, with all deference, they would not be correct if applied to the present case; for if the parties contract in reference to the existing laws of the State, they have not in view future acquisitions, if an insolvency occurs, 252*] *and the debtor complies with the requisitions of the law, and is discharged under it from all his debts. How could the creditor, under such circumstances, have in view after-acquired property, when the law admonished him that such property would be intangible for debts contracted before the discharge? With respect to the industry, talents and integrity, which are supposed to constitute a fund, which is as confidently trusted to as property itself; if the debtor had an idea, that after being irretrievably ruined, and borne down by the magnitude and weight of his debts, his future acquisitions would be liable to be seized upon as soon as they were gotten, it is very easy to conceive that every incentive to industry would be utterly extinguished, and further acquisitions would be of little or no value.

The Supreme Court of the United States, to leave no doubt that they had not in view a case like the present, observe: "Although the States may, until that power shall be exercised by Congress, pass laws concerning bankrupts, yet they cannot, constitutionally, introduce into such laws a clause which discharges the obligations a bankrupt has entered into:" thus plainly indicating, that a bankrupt law, which a state may pass, must, to have the effect of discharging the obligations of debtors, be prospective, not retrospective.

The opinion distinguishes between a case impairing the obligation of a contract, and operating directly upon it, and a law affecting or modifying the remedy upon the contract; the latter is admitted to be under the control of the legislative power of a state; and, although we may not feel the full force of the distinction, it does not become us to analyze the opinion, or to reason upon it, any further than to observe that the remedy is essential, in many cases, to the contract; and to modify it, so as to frustrate the contract, or render it less valuable, would have the indirect effect to impair its obligation.

In many of the states, real property cannot be sold on execution; and when there is a failure of personal property to satisfy the creditor, in some of the states, the real property of the debtor must either be left untouched, or be taken at the appraisal of indifferent men; and in some one or more of the states, real property is extended, and the *creditor is to be satisfied out of the [*153 rents and profits. It is not supposed that the court meant to say that these laws were unconstitutional. It is true that they relate to the remedy which a creditor may use to enforce the payment of his debt; and if the law existed when the contract was made, the creditor could not complain, for he contracted with reference to the law, and knew, or ought to have known, that the real property of his debtor could not be sold; but if a law were to be passed posterior to the contract, either withdrawing the debtor's real property from a liability to satisfy his creditor, or obliging him to go unpaid, unless he would accept land not contracted to be taken, instead of money which was stipulated to be paid, the creditor might complain, with some justice, perhaps, that his contract was impaired.

Many cases might be put, in which the **lex loci** becomes, impliedly, part and parcel of the **res gesta.** If a sum of money is stipulated to be paid on a day certain, and the contract is silent as to interest, the law attaches on the contract, and declares interest shall be paid thereafter; for this the parties have tacitly made part of the contract. So, also, in all cases of implied promises, the law raises them, and the parties have virtually, though not actually, so contracted; as in actions for money had and received, or good sold, when there had been no express convention of the parties.

In the case of **M'Millan v. M'Niell,** the parties having contracted in South Carolina, had no reference to the laws of Louisiana, and the laws of the latter State formed no part of the contract; nor did they attach upon, or control it, in its concoction. The application, therefore, of the laws and proceedings of Louisiana, to a contract made in South Carolina, between citizens of that State, and annulling the contract at the instance of the debtor, when the creditor was beyond the control and out of the reach of their jurisdiction, was, assuredly a case widely different from that under consideration; and it was, in our apprehension, correct to say that the law of Louisiana, having been passed before the debt was contracted in South Carolina, made no difference in the application of the principle laid down in **Sturges v. *Crowninshield.** [*254 On the whole, after our laws of insolvency have been continued, with very little variation, except as to the Act of 1811, from the period of the formation of the Constitution of the United States; after we have repeatedly pronounced regular and fair discharges under them, to be valid and effectual, for such a series of years; and when the cases decided by the Supreme Court of the United States are so perfectly distinguishable from the case now presented, it is too much to ask this court to take a step in advance of the Supreme Court of the United States, and to anticipate their decision, on a question certainly not decided. We are, therefore, unanimously of opinion that the execution issued in this case be set aside, with costs. We reserve our opinions, until the next term, upon the motions to set aside the executions issued on judgment, from which the defendants were discharged under the Act of the 3d of April, 1811; and also upon the motions for leave to issue writs of **scire facias:** those cases require more consideration than the limited time of this term will enable us to bestow.

[CONSTITUTIONAL LAW.]

OGDEN, PLAINTIFF IN ERROR,
v.
SAUNDERS, DEFENDANT IN ERROR.

REP. 12 WHEATON 213

* * * * * * * * * *

The learned judges delivered their opinions as follows:
Mr. Justice **Washington.** The first and most important

point to be decided in this cause turns essentially upon the question, whether the obligation of a contract is impaired by a state bankrupt or insolvent law, which discharges the person and the future acquisitions of the debtor from his liability under a contract entered into in that state after the passage of the act.

* * * * * * * * *

*I come now to the consideration of [*256 the question, which for the first time has been directly brought before this court for judgment. I approached it with more than ordinary sensibility, not only on account of its importance, which must be acknowledged by all, but of its intrinsic difficulty, which every step I have taken in arriving at a conclusion with which my judgment could in any way be satisfied, has convinced me attends it. I have examined both sides of this great question with the most sedulous care, and the most anxious desire to discover which of them, when adopted, would be most likely to fulfil the intentions of those who framed the constitution of the United States. I am far from asserting that my labors have resulted in entire success. They have lead me to the only conclusion by which I can stand with any degree of confidence; and yet, I should be disingenous were I to declare, from this place, that I embrace it without hesitation, and without a doubt of its correctness. The most that candor will permit me to say upon the subject, is that I see, or think I see, my way more clear on the side which my judgment leads me to adopt than on the other, and it must remain for others to decide whether the guide I have chosen has been a safe one or not.

It has constantly appeared to me throughout the different investigations of this question, to which it has been my duty to attend, that the error of those who controvert the constitutionality of the bankrupt law under consideration in its application to this case, if they be in error at all, has arisen from not distinguishing accurately between a law which impairs contract, and which impairs its obligation. A contract is defined by all to be an agreement to do, or not to do, some particular act; and in the construction of this agreement, depending essentially upon the will of the parties between whom it is formed, we seek for their intention with a view to fulfil it. Any law, then, which enlarges, abridges, or in any manner changes this intention when it is discovered, necessarily impairs the contract itself, which is but the evidence of that intention. The manner, or the degree, in which this change is effected, can in no respect influence this conclusion; for whether the law affect the validity, the construction, the duration, the 257*] mode of discharge, *or the evidence of the agreement, it impairs the contract, though it may not do so to the same extent in all the supposed cases. Thus, a law which declares that no action shall be brought whereby to charge a person upon his agreement to pay the debt of another, or upon an agreement relating to lands, unless the same be reduced to writing, impairs a contract made by parol whether the law precede or follow the making of such contract; and if the argument that this law also impairs, in the former case, the obligation of the contract, be sound, it must follow that the statute of frauds and all other statutes which in any manner meddle with contracts, impair their obligation, and are consequently within the operation of this section and article of the constitution. It will not do to answer that in the particular case put, and in others of the same nature, there is no contract to impair, since the pre-existing law denies all remedy for its enforcement, or forbids the making of it, since it is impossible to deny that the parties have expressed their will in the form of a contract, notwithstanding the law denies to it any valid obligation.

This leads us to a critical examination of the particular phraseology of that part of the above section which relates to contracts. It is a law which impairs the obligation of contracts, and not the contracts themselves, which is interdicted. It is not to be doubted, that this term, obligation, when applied to contracts, was well considered and weighed by those who framed the constitution, and was intended to convey a different meaning from what the prohibition would have imported without it. It is this meaning of which we are all in search.

What is it, then, which constitutes the obligation of a contract? The answer is given by the Chief Justice, in the case of Sturges v. Crowninshield, to which I readily assent now, as I did then; it is the law which binds the parties to perform their agreement. The law, then, which has this binding obligation, must govern and control the contract in every shape in which it is intended to bear upon it, whether it affect its validity, construction, or discharge.

* * * * * * * * * *

But can it be seriously insisted, that this, any more than the moral law upon which it is founded, was exclusively in the contemplation of those who framed this constitution? What is the language of this universal law? It is simply that all men are bound to perform their contracts. The injunction is as absolute as the contracts to which it applies. It admits of no qualification, and no restraint, either as to its validity, construction, or discharge, further than may be necessary to develop the intention of the parties to the contract. And if it be true, that this is exclusively the law to which the constitution refers us, it is very apparent that the sphere of state legislation upon subjects connected with the contracts of individuals, would be abridged beyond what it can for a moment be believed the sovereign states of this Union would have consented to; for it will be found, upon examination, that there are few laws which concern the general *police of a state, or the government of [*259 its citizens, in the intercourse with eac hother, or with strangers, which may not in some way or other affect the contracts which they have entered into, or may thereafter form. For what are laws of evidence, or which concern remedies—frauds and perjuries—laws of registration, and those which affect landlord and tenant, sales at auction, acts of limitations, and those which limit the fees of professional men, and the charges of tavern-keepers, and a multitude of others which crowd the codes of every state, but laws which may affect the validity, construction or duration, or discharge of contracts? Whilst I admit, then, that this common law of nations, which has been mentioned, may form in part the obligation of a contract, I must unhesitatingly insist, that this law is to be taken in strict subordination to the municipal laws of the land where the contract is made, or is to be executed. The former can be satisfied by nothing short of performance; the latter may affect and control the validity, construction, evidence, remedy, performance and discharge of the contract. The former is the common law of all civilized nations, and of each of them; the latter is the peculiar law of each, and is paramount to the former whenever they come in collision with each other.

It is, then, the municipal law of the state, whether that be written or unwritten, which is emphatically the law of the contract made within the state, and must govern it throughout, wherever its performance is sought to be enforced.

It forms, in my humble opinion, a part of the contract,

and travels with it wherever the parties to it may be found. It is so regarded by all the civilized nations of the world, and is enforced by the tribunals of those nations according to its own forms, unless the parties to it have otherwise agreed, as where the contract is to be executed in, or refers to the laws of, some other country than that in which it is formed, or where it is of an immoral character, or contravenes the policy of the nation to whose tribunals the appeal is made; in which latter cases, the remedy which the comity of nations affords for enforcing the obligation of contracts wherever formed, is denied. Free from these objections, this law, which accompanies the contract, as forming a part of it, is 260*] *regarded and enforced everywhere, whether it affect the validity, construction, or discharge of the contract. It is upon this principle of universal law, that the discharge of the contract, or of one of the parties to it, by the bankrupt laws of the country where it was made, operates as a discharge everywhere.

If, then, it be true that the law of the country where the contract is made, or to be executed, forms a part of that contract, and of its obligation, it would seem to be somewhat of solecism to say that it does at the same time impair that obligation.

But, it is contended, that if the municipal law of the state where the contract is so made, form a part of it, so does that clause of the constitution which prohibits the states from passing laws to impair the obligation of contracts; and, consequently, that the law is rendered inoperative by force of its controlling associate. All this I admit, provided it be first proved that the law so incorporated with, and forming a part of the contract, does, in effect, impair its obligation; and before this can be proved, it must be affirmed, and satisfactorily made out, that if, by the terms of the contract, it is agreed that, on the happening of a certain event, as, upon the future insolvency of one of the parties, and his surrender of all his property for the benefit of his creditors, the contract shall be considered as performed and at an end, this stipulation would impair the obligation of the contract. If this proposition can be successfully affirmed, I can only say that the soundness of it is beyond the reach of my mind to understand.

Again, it is insisted that if the law of the contract forms a part of it, the law itself cannot be repealed without impairing the obligation of the contract. This proposition I must be permitted to deny. It may be repealed at any time at the will of the legislature, and then it ceases to form any part of those contracts which may afterwards be entered into. The repeal is no more void than a new law would be which operates upon contracts to affect their validity, construction, or duration. Both are valid, (if the view which I take of this case be correct) as they may affect contracts afterwards formed; but neither are so, if they bear upon existing contracts; and, in 261*] the former case, in which the repeal *contains no enactment, the constitution would forbid the application of the repealing law to past contracts, and to those only.

To illustrate this argument, let us take four laws, which, either by new enactments, or by the repeal of former laws, may affect contracts as to their validity, construction, evidence or remedy.

Laws against usury are of the first description.

A law which converts a penalty, stipulated for by the parties, as the only atonement for a breach of the contract, into a mere agreement for a just compensation, to be measurged by the legal rate of interest, is of the second.

The statute of frauds, and the statute of limitations, may be cited as examples of the two last.

The validity of these laws can never be questioned by those who accompany me in the view which I take of the question under consideration, unless they operate, by their express provisions, upon contracts previously entered into; and even then they are void only so far as they do so operate, because, in that case, and in that case only, do they impair the obligation of those contracts. But if they equally impair the obligation of contracts subsequently made, which they must do if this be the operation of a bankrupt law upon such contracts, it would seem to follow, that all such laws, whether in the form of new enactments, or of repealing laws, producing the same legal consequences, are made void by the constitution; and yet the counsel for the defendants in error have not ventured to maintain so alarming a proposition.

If it be conceded that those laws are not repugnant to the constitution, so far as they apply to subsequent contracts, I am yet to be instructed how to distinguish between those laws, and the one now under consideration. How has this been attempted by the learned counsel who have argued this cause upon the ground of such distinction?

They have insisted that the effect of the law first supposed, is to annihilate the contract in its birth, or rather to prevent it from having a legal existence, and, consequently, that there is no obligation to be impaired. But this is clearly not so, since it may legitimately avoid all contracts afterwards *entered into, [*262 which reserve to the lender a higher rate of interest than this law permits.

The validity of the second law is admitted, and yet this can only be in its application to subsequent contracts; for it has not, and I think it cannot, for a moment, be maintained, that at law which, in express terms, varies the construction of an existing contract, or which, repealing a former law, is made to produce the same effect, does not impaid the obligation of that contract.

The statute of frauds, and the statute of limitations, which have been put as examples of the third and fourth classes of laws, are also admitted to be valid, because they merely concern the modes of proceeding in the trial of causes. The former, supplying a rule of evidence, and the latter, forming a part of the remedy given by the legislature to enforce the obligation, and likewise providing a rule of evidence.

All this I admit. But how does it happen that these laws, like those which affect the validity and construction of contracts, are valid as to subsequent, and yet void as to prior and subsisting contracts? For we are informed by the learned judge who delivered the opinion of this court in the case of Sturges v. Crowninshield, that, "if, in a state where six years may be pleaded in bar to an action of assumpsit, a law should pass, declaring that contracts already in existence, not barred by the statute, should be construed within it, there could be little doubt of its unconstitutionality."

It is thus most apparent that, whichever way we turn, whether to laws affecting the validity, construction, or discharges of contracts, or the evidence or remedy to be employed in enforcing them, we are met by this overruling and admitted distinction, between those which operate retrospectively or propectively. In all of them the law is pronounced to be void in the first class of cases, and not so in the second.

Let us stop, then, to make a more critical examination of the act of limitations, which, although it concerns the remedy, or, if it must be conceded, the evidence, is yet void or otherwise, as it is made to apply retroactively, or prospec-

tively, and see if it can, upon any intelligible principle, be distinguished from a 263*] *bankrupt law, when applied in the same manner. What is the effect of the former? The answer is, to discharge the debtor and all his future acquisitions from his contract; because he is permitted to plead it in bar of any remedy which can be instituted against him, and consequently in bar or destruction of the obligation which his contract imposed upon him. What is the effect of a discharge under a bankrupt law? I can answer this question in no other terms than those which are given to the former question. If there be a difference, it is one which, in the eye of justice at least, is more favorable to the validity of the latter than of the former; for in the one, the debtor surrenders everything which he possesses towards the discharge of his obligation, and in the other, he surrenders nothing, and sullenly shelters himself behind a legal objection with which the law has provided him, for the purpose of protecting his person, and his present, as well as his future acquisitions, against the performance of his contract.

It is said that the former does not discharge him absolutely from his contract, because it leaves a shadow sufficiently substantial to raise a consideration for a new promise to pay. And is not this equally the case with a certificated bankrupt, who afterwards promises to pay a debt from which his certificate had discharged him? In the former case, it is said the defendant must plead the statute in order to bar the remedy, and to exempt him from his obligation. And so, I answer, he must plead his discharge under the bankrupt law, and his conformity to it, in order, to bar the remedy of his creditor, and to secure to himself a like exemption. I have, in short, sought in vain for some other grounds on which to distinguish the two laws from each other, than those which were suggested at the bar. I can imagine no other, and I confidently believe that none exist which will bear the test of a critical examination.

To the decision of this court, made in the case of Sturges v. Crowninshield, and to the reasoning of the learned judge who delivered that opinion, I entirely submit; although I did not then, nor can I now bring my mind to concur in that part of it which admits the constitutional power of the state legislatures to pass bankrupt laws, by which I understand, those laws which discharge the person and the future *acquisitions of the bankrupt from his [*264 debts. I have always thought that the power to pass such a law was exclusively vested by the constitution in the legislature of the United States. But it becomes me to believe that this opinion was, and is incorrect, since it stands condemned by the decision of a majority of this court, solemnly pronounced.

After making this acknowledgment, I refer again to the above decision with some degree of confidence, in support of the opinion to which I am now inclined to come, that a bankrupt law, which operates prospectively, or in so far as it does so operate, does not violate the constitution of the United States. It is there stated, "that, until the power to pass uniform laws on the subject of bankruptcies be exercised by Congress, the states are not forbidden to pass a bankrupt law, provided it contain no principle which violates the tenth section of the first article of the constitution of the United States." The question in that case was, whether the law of New York, passed on the third of April, 1811, which liberates, not only the person of the debtor, but discharges him from all liability for any debt contracted previous, as well as subsequent to his discharge, on his surrendering his property for the use of his creditors, was a valid law under the constitution in its application to a debt contracted prior to its passage? The court decided that it was not, upon the single ground that it impaired the obligation of that contract. And if it be true, that the states cannot pass a similar law to operate upon contracts, subsequently entered into, it follows inevitably, either that they cannot pass such laws at all, contrary to express declaration of the court, as before quoted, or that such laws do not impair the obligation of contracts subsequently entered into; in fine, it is a self-evident proposition, that every contract that can be formed, must either precede, or follow, any law by which it may be affected.

I have, throughout the preceding part of this opinion, considered the municipal law of the country where the contract is made, as incorporated with the contract, whether it affects it validity, construction, or discharge. But I think it quite immaterial to stickle for this position, if it be conceded to me, what can scarcely be denied, that this municipal law constitutes * the law of the contract so [*265 formed, and must govern it throughout. I hold the legal consequences to be the same, in which every view the law, as it affects the contract, is considered.

I come now to a more particular examination and construction of the section under which this question arises; and I am free to acknowledge that the collocation of the subjects for which it provides has made an irresistible impression upon my mind, much stronger, I am persuaded, than I can find language to communicate to the minds of others.

It declares, that "not state shall coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts." These prohibitions, associated with the powers granted to Congress "to coin money, and to regulate the value thereof, and of foreign coin," most obviously constitute members of the same family, being upon the same subject, and governed by the same policy.

This policy was to provide a fixed and uniform standard of value throughout the United States, by which the commercial and other dealings between the citizens thereof, or between them and foreigners, as well as the moneyed transactions of the government, should be regulated. For it might well be asked, why vest in Congress the power to establish a uniform standard of value by the means pointed out, if the states might use the same means, and thus defeat the uniformity of the standard, and, consequently, the standard itself? And why establish a standard at all, for the government of the various contracts which might be entered into, if those contracts might afterwards be discharged by a different standard, or by that which it not money, under the authority of state tender laws? It is obvious, therefore, that these prohibitions, in the 10th section, are entirely homogeneous, and are essential to the establishment of a uniform standard of value, in the formation and discharge of contracts. It is for this reason independent of the general phraseology which is employed, that the prohibition, in regard to state tender laws, will admit of no construction which would confine it to state laws which have a retrospective operation.

266*] *The next class of prohibitions contained in this section consists of bills of attainder, ex post facto laws, and laws impairing the obligation of contracts.

Here, too, we observe, as I think, members of the same family brought together in the most intimate connection with each other. The states are forbidden to pass any bill of attainder or ex post facto law, by which a man shall be punished criminally or penalty, by loss of life, of his liberty, property, or reputation, for an act which, at the time of

its commission, violated no existing law of the land. Why did the authors of the constitution turn their attention to this subject, which, at the first blush, would appear to be peculiarly fit to be left to the discretion of those who have the police and good government of the state under their management and control? The only answer to be given is, because laws of this character are oppressive, unjust, and tyrannical; and, as such, are condemned by the universal sentence of civilized man. The injustice and tyranny which characterizes ex post facto laws, consists altogether in their retrospective operation, which applies with equal force, although not exclusively, to bills of attainder.

But if it was deemed wise and proper to prohibit state legislation as to retrospective laws, which concern, almost exclusively, the citizens and inhabitants of the particular state in which this legislation takes place, how much more did it concern the private and political interests of the citizens of all the states, in their commercial and ordinary intercourse with each other, that the same prohibition should be extended civilly to the contracts which they might enter into?

If it were proper to prohibit a state legislature to pass a retrospective law which should take from the pocket of one of its own citizens a single dollar, as a punishment for an act which was innocent at the time it was committed, how much more proper was it to prohibit laws of the same character precisely which might deprive the citizens of other states, and foreigners, as well as citizens of the same state, of thousands to which, by their contracts, they were justly entitled, and which they might possibly have realized but for such state interference? How natural, then, was it, under the *influence of these considerations, [*267 to interdict similar legislation in regard to contracts, by providing that no state shall pass laws impairing the obligation of past contracts? It is true that the two first of these prohibitions apply to laws of a criminal, and the last two laws of a civil character; but if I am correct in my view of the spirit and motives of these prohibitions, they agree in the principle which suggested them. They are founded upon the same reason, and the application of it is at least as strong to the last as it is to the two first prohibitions.

But these reasons are altogether inapplicable to laws of a prospective character. There is nothing unjust or tyrannical in punishing offenses prohibited by law, and committed in violation of that law. Nor can it be unjust or oppressive to declare by law that contracts subsequently entered into may be discharged in a way different from that which the parties have provided, but which they know, or may know, are liable, under certain circumstances, to be discharged in a manner contrary to the provisions of their contract.

Thinking, as I have always done, that the power to pass bankrupt laws was intended by the authors of the constitution to be exclusive in Congress, or, at least, that they expected the power vested in that body would be exercised so as effectually to prevent its exercise by the states, it is the more probable that, in reference to all interferences of the state legislatures upon the subject of contracts, retrospective laws were alone in the contemplation of the convention.

In the construction of this clause of the tenth section of the constitution, one of the counsel for the defendant supposed himself at liberty so to transpose the provisions contained in it as to place the prohibition to pass laws impairing the obligation of contracts in juxtaposition with the other prohibition to pass laws making anything but gold and silver coin a tender in payment of debts, inasmuch as the two provisions relate to the subject of contracts.

That the derangement of the words, and even sentences of a law, may sometimes be tolerated, in order to arrive at the apparent meaning of the legislature, to be gathered from other *parts, or from the entire scope of the [*268 law, I shall not deny. But I should deem it a very hazardous rule to adopt in the construction of an instrument so maturely considered as this constitution was by the enlightened statesmen who framed it, and so severely examined and criticised by its opponents in the numerous state conventions which finally adopted it. And if, by the construction of this sentence, arranged as it is, or as the learned counsel would have it to be, it could have been made out that the power to pass, prospective laws, affecting contracts, was denied to the states, it is most wonderful that not one voice was raised against the provision, in any of those conventions, by the jealous advocates of state rights, nor even an amendment proposed, to explain the clause, and exclude a construction which trenches so extensively upon the sphere of state legislation.

But, although the transposition which is contended for may be tolerated in cases where the obvious intention of the legislature can in no other way be fulfilled, it can never be admitted in those where consistent meaning can be given to the whole clause as its authors thought proper to arrange it, and where the only doubt is, whether the construction which the transposition countenances, or that which results from the reading which the legislature has thought proper to adopt, is most likely to fulfil the supposed intention of the legislature. Now, although it is true that the prohibition to pass tender laws of a particular description, and laws impairing the obligation of contracts, relate, both of them, to contracts, yet the principle which governs each of them, clearly to be inferred from the subjects with which they stand associated, is altogether different; that of the first forming part of a system for fixing a uniform standard of value, and, of the last, being founded on a denunciation of retrospective laws. It is, therefore, the safest course, in my humble oponion, to construe this clause of the section according to the arrangement which the convention has thought proper to make of its different provisions. To insist upon a transposition, with a view to warrant one construction rather than the other, falls little short, in my opinion, of a begging of the whole question in controversy.

269*] *But why, it has been asked, forbid the states to pass laws making anything but gold and silver coin a tender in payment of debts, contracted subsequent, as well as prior, to the law which authorizes it; and yet confine the prohibition to pass laws impairing the obligation of contracts to past contracts, or in other words, to future bankrupt laws, when the consequence resulting from each is the same, the latter being considered by the counsel as being, in truth, nothing less than tender laws in disguise.

An answer to this question has, in part, been anticipated by some of the preceding observations. The power to pass bankrupt laws having been vested in Congress, either as an exclusive power, or under the belief that it would certainly be exercised, it is highly probable that state legislation upon that subject was not within the contemplation of the convention, or, if it was, it is quite unlikely that the exercise of the power by the state legislatures would have been prohibited by the use of terms which, I have endeavored to show, are inapplicable to laws intended to operate pro-

spectively. For had the prohibition been to pass laws impairing contracts, instead of the obligation of contracts, I admit that it would have borne the construction which is contended for, since it is clear that the agreement of the parties in the first case, would be impaired as much by a prior as it would be by a subsequent bankrupt law. It has, besides, been attempted to be shown, that the limited restriction upon state legislation, imposed by the former prohibition, might be submitted to by the states, whilst the extensive operation of the latter would have hazarded, to say the least of it, the adoption of the constitution by the state conventions.

But an answer, still more satisfactory to my mind, is this: Tender laws, of the description stated in this section, are always unjust; and, where there is an existing bankrupt law at the time the contract is made, they can seldom be useful to the honest debtor. They violate the agreement of the parties to it, without the semblance of an apology for the measure, since they operate to discharge the debtor from his undertaking, upon terms variant from those by which he bound himself, to the injury of the creditor, and unsupported, * in many [*270 cases, by the plea of necessity. They extend relief to the opulent debtor, who does not stand in need of it; as well as to the one who is, by misfortunes, often unavoidable, reduced to poverty, and disabled from complying with his engagements. In relation to subsequent contracts, they are unjust when extended to the former class of debtors, and useless to the second, since they may be relieved by conforming to the requisitions of the state bankrupt law, where there is one. Being discharged by this law from all his antecedent debts, and having his future acquisitions secured to him, an opportunity is afforded him to become once more a useful member of society.

If this view of the subject be correct, it will be difficult to prove that a prospective bankrupt law resembles in any of its features, a law which should make anything but gold and silver coin a tender in payment of debts.

I shall now conclude this opinion, by repeating the acknowledgment which candor compelled me to make in its commencement, that the question which I have been examining is involved in difficulty and doubt. But if I could rest my opinion in favor of the constitutionality of the law on which the question arises, on no other ground than this doubt so felt and acknowledged, that alone would, in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body, by which any law is passed, to presume in favor of its validity, until its violation of the constitution is proved beyond all reasonable doubt. This has always been the language of this court, when that subject has called for its decision; and I know that it expresses the honest sentiments of each and every member of this bench. I am perfectly satisfied that it is entertained by those of them from whom it is the misfortune of the majority of the court to differ on the present occasion, and that they feel no reasonable doubt of the correctness of the conclusion to which their best judgment has conducted them.

My opinion is, that the judgment of the court below ought to be reversed, and judgment given for the plaintiff in error.

*Mr. Justice Johnson.

* * * * * * * * * *

Right and obligation are considered by all ethical writers *as correlative terms: [*282 Whatever I by my contract give another a right to require of me, I by that act lay myself under an obligation to yield or bestow. The obligations of every contract will then consist of that right or power over my will or actions, which I by my contract, confer on another. And that right and power will be found to be measured neither by moral law alone, nor universal law alone, nor by the laws of society alone, but by a combination of the three—an operation in which the moral law is explained and applied by the law of nature; and both modified and adapted to the exigencies of society by positive law. The constitution was framed for society, and an advanced state of society, in which I will undertake to say that all the contracts of men receive a relative, and not a positive interpretation: for the rights of all must be held and enjoyed in subserviency to the good of the whole. The state construes them, the state applies them, the state controls them, and the state decides how far the social exercise of the rights they give us over each other can be justly asserted. I say the social exercise of these rights, because in a state of nature, they are asserted over a fellow creature, but in a state of society over a fellow citizen. Yet, it is worthy of observation, how closely the analogy is preserved between the assertion of these rights in a state of nature and a state of society, in their application to the class of contracts under consideration.

* * * * * * * * * *

The progress of parties, from the initiation to the consummation of their rights, is exactly parallel to this in a state of society. With this difference, that in the concoction of their contracts, they are controlled by the laws of the society of which they are members, and for the construction and enforcement of their contracts, they rest upon the functionaries of its government. They can enter into no contract which the laws of that community forbid, and the validity and effect of their contracts is what the existing laws give them. The remedy is no longer retained in their own hands, but surrender to the community, to a power competent to do justice, and bound to discharge towards them the acknowledged duties of government to society, according to received principles of equal justice. The public duty, in this respect, is the substitute for that right which they possessed in a state of nature, to enforce a fulfillment of contracts; and if, even in a state of nature, limits were prescribed by the reason and nature of things, to the exercise of individual power in enacting the fulfillment of contracts, much more will they be in a state of society.

* * * * * * * * * *

There is a very striking illustration of this principle to be found in many instances in the books; I mean those cases in which parties are released from their contracts by a declaration of war, or where laws are passed rendering that unlawful, even incidentally, which was lawful at the time of the contract. Now, in both these instances, it is the government that puts an end to the contract, and yet no one ever imagined that it thereby violates the obligation of a contract.

It is, therefore, far from being true, as a general proposition, "that a government necessarily violates the obligation of a contract, which it puts an end to without performance." It is the motive, the policy, the object, that must characterize the legislative act, to affect it with the imputation of violating the obligation of contracts.

* * * * * * * * * *

Mr. Justice Thompson.

* * * * * * * * * *

If contracts are not made with reference to existing laws,

and to be governed and regulated by such laws, the agreement of parties, under the extended construction now claimed for this clause in the constitution, may control state laws on the subject of contracts altogether. A parol agreement for the sale of land is a contract, and if the agreement alone makes the contract, and it derives its obligation solely from such agreement, without reference to the creating law, it would seem to follow, that any law which had declared such contract void, or had denied a remedy for breach thereof, would impair its obligation. A construction involving such consequences is certainly inadmissible. Any contract not sanctioned by existing laws creates no civil obligation; and any contract discharged in the mode and manner provided by the existing law where it was made, cannot, upon any just principles of reasoning, be said to impair such contract.

It will, I believe, be found on examination, that the course of legislation in some of the states between debtor and creditor, which formed the grounds of so much complaint, and which probably gave rise to this prohibition in the constitution, consisted principally, if not entirely, of laws having a retrospective operation upon antecedent debts.

If a contract does not derive its obligation from the positive law of the country where it is made, where is to be found the rule, that such obligation does not attach until the contracting party has attained a certain age? In what code of natural law, or in what system of universal law, out of which it is said, at the bar, spring the eternal and unalterable principles of right and of justice, will be found a rule, that such obligation does not attach so as to bind a party under the age of twenty-one years? No one will pretend that a law exonerating a party from contracts entered into before arriving at such age would be invalid. And yet, it would impair the obligation of the contract, if such obligation is derived from any other source than the existing law of the place where made. Would it not be within the legitimate powers 300*] of a state legislature to declare prospectively that no one should be made responsible, upon contract entered into before arriving at the age of twenty-five years? This, I presume, cannot be doubted. But, to apply such a law to past contracts, entered into when twenty-one years was the limit, would clearly be a violation of the obligation of the contract. No such distinction, however, could exist, unless the obligation of the contract grows out of the existing law, and with reference to which the contract must be deemed to have been made.

* * * * * * * * * *

It is the same principle, we find, contemporaneously (13th July, 1787, 1 L. U. S. 475) asserted by the old Congress, in an ordinance for the government of the territory of the United States north-west of the river Ohio. By one of the fundamental articles it is provided, that "in the just preservation of rights and property, it is understood and declared that no law ought ever to be made, or have force in the territory, that shall in any maner whatever interfere with or affect private contracts or engagements, bona fide, and without fraud, previously made," thereby pointedly making a distinction between laws affecting contracts antecedently, and subsequently made; and such a distinction seems to me to be founded upon the soundest principles of justice, if there is anything in the argument, that contracts are made with reference to, and derive their obligation from the existing law.

That the prohibition upon the states to pass laws impairing the obligation of contracts is applicable to private rights merely, without reference to bankrupt laws was evidently the understanding of those distinguished commentators on the constitution, who wrote the Federalist. In the 44th number of that work (p. 281), it is said that "bills of attainder, ex post facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed *to some of the state constitutions, and [*305 all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional defenses against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights."

* * * * * * * * * *

When we look at the whole clause in which these restrictions are contained, it will be seen that the subjects embraced therein are evidently to be divided into two classes; the one of the public and national character, the power over which is entirely taken away from the states; and the other relating to private and personal rights, upon which the states may legislate under the restrictions specified. The former are, "no state shall enter into any treaty, alliance, 306*] or confederation, grant *letters of marque and reprisal, coin money, emit bills of credit." Thus far there can be no question that they relate to powers of a general and national character.

* * * * * * * * * *

States may legislate on the subject of contracts, but the laws must not impair the obligation of such contracts. A tender of payment necessarily refers to the time when the tender is made, and has no relation to the time when the law authorizing it shall be passed, or when the debt was contracted. The prohibition is, therefore, general and unlimited in its application. It has been urged in argument, that this prohibition to the states to pass laws impairing the obligation of contracts, had in view an object of great national policy, connected with the power to regulate commerce; that the leading purpose was to take from the states the right of passing bankrupt laws.

* * * * * * * * * *

Mr. Justice Trimble.

The question raised upon the record in this case, and which his been discussed at the bar, may be stated thus: Has a state, since the adoption of the constitution of the United States authority to pass a bankrupt *or invol- [*314 vent law, discharging the bankrupt or insolvent from all contracts made within the state after the passage of the law, upon the bankrupt or insolvent surrendering his effects and obtaining a certificate of discharge from the constituted authorities of the state?

The counsel for the defendant in error have endeavored to maintain the negative of the proposition, on two grounds:

Ist. That the power conferred on Congress by the constitution, "to establish uniform laws on the subject of bankruptcies throughout the United States" is, in its nature, an exclusive power; that consequently no state has authority to pass a bankrupt law, and that the law under consideration is a bankrupt law.

2nd. That it is a law impairing the obligation of contracts, within the meaning of the constitution.

In the case of Sturges v. Crowninshield, 4 Wheat. Rep. 122, this court expressly decided "that since the adoption of the constitution of the United States, a state has authority to pass a bankrupt law, provided such law does not impair the obligation of contracts, within the meaning of the

constitution, and provided there be no act of Cnogress in force to establish a uniform system of bankruptcy conflicting with such law."

This being a direct judgment of the court, overruling the first position assumed in argument, that judgment ought to prevail, unless it be very clearly shown to be erroneous.

Not having been a member of the court when that judgment was given, I will content myself with saying the argument has not convinced me it is erroneous; and that, on the contrary, I think the opinion is fully sustained by a sound construction of the constitution.

There being no act of Congress in force to establish a uniform system of bankruptcy, the first ground of argument must fail.

It is argued that the law under consideration is a law impairing the obligation of contracts within the meaning of the constitution. The 10th section of the 1st article of the constitution is in these words: "No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit make anything 315*] *but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

In the case of Sturges v. Crowninshield the defendant in the original suit had been discharged in New York, under an insolvent law of that state which purported to apply to past as well as future contracts; and being sued on a contract made within the state prior to the passage of the law, he pleaded his certificate of discharge in bar of the action. In answer to the third and fourth questions, certified from the Circuit Court to this court for its final decision, drawing in question the constitutionality of the law, and the sufficiency of the plea in bar founded upon it, this court certified its opinion "that the act of New York, pleaded in this case, so far as it attempts to discharge the contract on which this suit was instituted, is a law impairing the obligation of contracts, within the meaning of the constitution of the United States; and that the plea of the defendant is not a good and sufficient bar of the plaintiff's action."

In the case of M'Millan v. M'Neill, 4 Wheat. Rep. 209, the defendant in the court below pleaded a discharge obtained by him in Louisiana, on the 23d of August, 1815, under the insolvent law of that state, passed in 1808, in bar of a suit instituted against him upon a contract made in South Carolina in the year 1813. This court decided that the plea was no bar to the action, and affirmed the judgment given below for the plaintiff.

These cases do not decide the case at bar. In the first, the discharge was pleaded in bar to a contract made prior to the passage of the law; and in the second, the discharge obtained in one state under its laws was pleaded to a contract made in another state. They leave the question open, whether a discharge obtained in a state, under an insolvent law of the state, is a good bar to an action brought on a contract made within a state after the passage of the law.

In presenting this inquiry, it is immaterial whether the law purports to apply to past as well as future contracts, or is wholly prospective in its provisions.

*It is not the terms of the law, but [*316 its effect, that is inhibited by the constitution. A law may be in part constitutional and in part unconstitutional. It may, when applied to a given case, produce an effect which is prohibited by the constitution; but it may not, when applied to a case differently circumstanced, produce such prohibited effect. Whether the law under consideration, in its effects and operation upon the contract sued on in this case, be a law impairing the obligation of this contract, is the only necessary inquiry.

In order to come to a just conclusion we must ascertain, if we can, the sense in which the terms, "obligation of contracts," is used in the constitution. In attempting to do this I will premise that, in construing an instrument of so much solemnity and importance, effect should be given, if possible, to every word. No expression should be regarded as a useless expletive; nor should it be supposed, without the most urgent necessity, that the illustrious framers of that instrument had, from ignorance or inattention, used different words which are, in effect, merely tautologous.

I understand it to be admitted in argument, and if not admitted it could not be reasonably contested, that, in the nature of things, there is a difference between a "contract" and the "obligation" of a contract. The terms "contract" and "obligation," although sometimes used loosely as convertible terms, do not properly impart the same idea. The constitution plainly presupposes that a contract and its obligation are different things. Were they the same thing, and the terms "contract" and "obligation" convertible, the constitution, instead of being read as it now is, "that no state shall pass any law impairing the obligation of "contracts;" might, with the same meaning, be read, "that no state shall pass any law impairing the obligation of obligations," or "the contract of contracts;" and to give to the constitution the same meaning which either of these readings would import, would be ascribing to its framers a useless and palpably absurd tautology. The illustrious framers of the constitution could not be ignorant that there were, or might be, many contracts without obligation, and many obligations without contracts. "A contract is defined to be an agreement in which a party *undertakes to do, or [*317 not to do, a particular thing." Sturges v. Crowninshield, 4 Wheat. Rep. 197.

This definition is sufficient for all the purposes of the present investigation, and its general accuracy is not contested by either side.

From the very terms of the definition it results incontestably that the contract is the sole act of the parties, and depends wholly on their will. The same words, used by the same parties, with the same objects in view, would be the same contract, wether made upon a desert island, in London, Constantinople or New York. It would be the same contract, whether the law of the place where the contract was made recognized its validity and furnished remedies to enforce its performance, or prohibited the contract and withheld all remedy for its violation.

The language of the constitution plainly supposes that the obligation of a contract is something not wholly depending upon the will of the parties. It incontestably supposes the obligation to be something which attaches to, and lays hold of the contract, and which, by some superior external power, regulates and controls the conduct of the parties in relation to the contract; it evidently supposes that superior external power to rest in the will of the legislature.

What, then, is the obligation of contracts, within the meaning of the constitution? From what source does that obligation arise?

The learned Chief Justice, in delivering the opinion of the court in Sturges v. Crowninshield, after having defined a contract to be "an agreement wherein a party undertakes to do, or not to do, a particular thing," proceeds to define the obligation of the contract in these words: "The law binds him to perform his engagement and this is, of course, the obligation of the contract."

The Institutes, lib. 3, tit. 4 (Cooper's translation), says, "an obligation is the chain of the law, by which we are necessarily bound to make some payment, according to the law of the land."

Pothier, in his treatise concerning obligations, in speaking of the obligation of contracts, calls it "vinculum legis," the chain of the law. Paley, p. 56, says, "to be obliged, is 318*] *to be urged by a violent motive, resulting from the command of another." From these authorities—and many more might be cited—it may be fairly concluded that the obligation of the contract consists in the power and efficacy of the law which applies to, and enforces performance of the contracts, or the payment of an equivalent for non-performance. The obligation does not inhere, and subsist in the contract itself, proprio vigore, but in the law applicable to the contract. This is the sense, I think in which the constitution uses the term "obligation."

From what law, and how, is this obligation derived, within the meaning of the constitution? Even if it be admitted that the moral law necessarily attaches to the agreement, that would not bring it within the meaning of the constitution. Moral obligations are those arising from the admonitions of conscience, and accountability to the Supreme Being. No human law-giver can impair them. They are entirely foreign from the purposes of the constitution. The constitution evidently contemplates an obligation which might be impaired by a law of the state, if not prohibited by the constitution.

It is argued, that the obligation of contracts is founded in, and derived from, general and universal law; that, by these laws, the obligation of contracts is co-extensive with the duty of performance, and, indeed, the same thing; that the obligation is not derived from, nor depends upon, the civil or municipal laws of the state; and that this general universal duty, or obligation, is what the constitution intends to guard and protect against the unjust encroachments of state legislation. In support of this doctrine, it is said, that no state, perhaps, ever declared by statute or positive law that contracts shall be obligatory; but that all states, assuming the pre-existence of the obligation of contracts, have only superadded, by municipal law, the means of carrying the pre-existing obligation into effect.

This argument struck me, at first, with great force; but, upon reflection, I am convinced it is more specious than solid. If it were admitted that, in an enlarged and very general sense, obligations have their foundation in natural, or what is called, in the argument, universal law; that this *natural obligation [*319 is, in the general, assumed by states as pre-existing, and, upon this assumption, they have not thought it necessary to pass declaratory laws in affirmance of the principles of universal law; yet nothing favorable to the argument can result from these admissions, unless it be further admitted, or proved, that a state has no authority to regulate, alter, or in any wise control, the operation of this universal law within the state, by its own peculiar municipal enactions. This is not admitted, and, I think, cannot be proved.

I admit that men have, by the laws of nature, the right of acquiring, and possessing property, and the right of contracting engagements. I admit that these natural rights have their correspondent natural obligations. I admit, that in a state of nature, when men have not submitted themselves to the controlling authority of civil government, the natural obligation of contracts is co-extensive with the duty of performance. This natural obligation is founded solely in the principles of natural or universal law. What is this natural obligation? All writers who treat on the subject of obligations, agree that it consists in the right of the one party to demand from the other party what is due; and if it be withheld, in his right, and supposed capacity to enforce performance, or to take an equivalent for non-performance, by his own power. This natural obligation exists among sovereign and independent states and nations, and amongst men, in a state of nature, who have no common superior, and over whom none claim, or can exercise, a controlling legislative authority.

But when men form a social compact, and organize a civil government, they necessarily surrender the regulation and control of these natural rights and obligations into the hands of the government. Admitting it, then, to be true, that, in general, men derive the right of private property, and of contracting engagements, from the principles of natural, universal law; admitting that these rights are, in the general, not derived from, or created by society, but are brought into it; and that no express, declaratory, municipal law be necessary for their creation or recognition; yet, it is equally true that these rights, and the obligations 320*] resulting *from them, are subject to be regulated, modified, and sometimes absolutely restrained, by the positive enactions of municipal law. I think it incontestably true that the natural obligation of private contracts between individuals in society ceases, and is converted into a civil obligation, by the very act of surrendering the right and power of enforcing performance into the hands of the government. The right and power of enforcing performance exists, as I think all must admit, only in the law of the land, and the obligation resulting from this condition is a civil obligation.

As, in a state of nature, the natural obligation of a contract consists in the right and potential capacity of the individual to take, or enforce the delivery of the thing due to him by the contract, or its equivalent; so, in the social state, the obligation of a contract consists in the efficacy of the civil law, which attaches to a contract, and enforces its performance, or gives an equivalent in lieu of performance. From these principles it seems to result as a necessary corollary, that the obligation of a contract made within a sovereign state must be precisely that allowed by the law of the state, and none other. I say allowed, because, if there be nothing in the municipal law to the contrary, the civil obligation being, by the very nature of government, substituted for, and put in the place of, natural obligations, would be co-extensive with it; but if by positive enactions, the civil obligation is regulated and modified so as that it does not correspond with the natural obligation, it is plain the extent of the obligation must depend wholly upon the municipal law. If the positive law of the state declares the contract shall have no obligation, it can have no obligation, whatever may be the principles of natural law in relation to such a contract. This doctrine has been held and maintained by all states and nations. The power of controlling, modifying, and even of taking away, all obligation from such contracts as, independent of positive enactions to the contrary, would have been obligatory, has been exercised by all independent sovereigns; and it has been universally held, that the courts of one sovereign will, upon principles of comity and common justice, enforce contracts made within the dominions of another sovereign, so 321*] far as they were obligatory by the *law of the country where made; but no instance is recollected, and none is believed to exist, where the courts of one sovereign have held a contract, made within the dominions of another,

obligatory against, or beyond the obligation assigned to it by the municipal law of its proper country.

* * * * * * * * * *

It is admitted in argument, that statutes of frauds and perjuries, statutes of usury, and of limitation, are not laws impairing the obligation of contracts. They are laws operating prospectively upon contracts thereafter made, It is said, however, they do not apply, in principle, to this case; because the statutes of frauds and perjuries apply only to the remedies, and because, in that case, and under the statutes of usury, the contracts were void from the beginning, were not recognized by law as contracts, and had no obligation; and that the statutes of limitation create rules of evidence only.

Although these observations are true, they do not furnish the true reason, nor, indeed, any reason, why these laws do not impair the obligation of contracts. The true and only reason is, that they operate on contracts made after the passage of the laws, and not upon existing contracts. And hence the Chief Justice very properly remarks, of both usury laws, and laws of limitation, in delivering the opinion in Sturgis v. Crowninshield, that if they should be made to *operate upon contracts [*327 already entered into they would be unconstitutional and void. If a statute of frauds and perjuries should pass in a state formerly having no such laws, purporting to operate upon existing contracts, as well as upon those made after its passage, could it be doubted, that so far as the law applied to, and operated upon, existing contracts, it would be a law "impairing the obligation of contracts?" Here, then, we have the true reason and principle of the constitution. The great principle intended to be established by the constitution, was the inviolability of the obligation of contracts, as the obligation existed and was recognized by the laws in force at the time the contracts were made. It furnished to the legislatures of the states a simple and obvious rule of justice, which, however theretofore violated, should by no means be thereafter violated; and whilst it leaves them at full liberty to legislate upon the subject of all future contracts, and assign to them either no obligation, or such qualified obligation as, in their opinion, may consist with sound policy and the good of the people; it prohibits them from retrospecting upon existing obligations, upon any pretext whatever. Whether the law professes to apply to the contract itself, to fix a rule of evidence, a rule of interpretation, or to regulate the remedy, it is equally within the true meaning of the constitution, if it, in effect, impairs the obligation of existing contracts; and, in my opinion, is out of its true meaning, if the law is made to operate on future contracts only. I do not mean to say that every alteration of the existing remedies would impair the obligation of contracts; but I do say, with great confidence, that a law taking away all remedy from existing contracts, would be, manifestly, a law impairing the obligation of contracts. The moral obligation would remain, but the legal, or civil obligation, would be gone, if such a law should be permitted to operate. The natural obligation would be gone, because the laws forbid the party to enforce performance by his own power. On the other hand, a great variety of instances may readily be imagined in which the legislature of a state might alter, modify, or repeal existing remedies, and enact others in their stead without the slightest ground for a supposition *that the new [*328 law impaired the obligation of contracts. If there be intermediate cases of a more doubtful character, it will be time enough to decide them when they arise.

It is argued, that as the clause declaring that "no state shall pass any law impairing the obligation of contracts" is associated in the same section of the constitution with the prohibition to "coin money, emit bills of credit," or "make anything but gold and silver coin a legal tender in payment of debts;" and as these all evidently apply to legislation in reference to future, as well as existing contracts, and operate prospectively, to prohibit the action of the law, without regard to the time of its passage, the same construction should be given to the clause under consideration.

This argument admits of several answers. First, as regards the prohibition to coin money, and emit bills of credit. The constitution had already conferred on Congress the whole power of coining money, and regulating the current coin. The grant of this power to Congress, and the prohibitions upon the states, evidently take away from the states all power of legislation and action on the subject, and must, of course, apply to the future action of laws, either then made, or to be made. Indeed, the language plainly indicates that it is the act of "coining money," and the act of emitting bills of credit, which is forbidden, without any reference to the time of passing the law, whether before or after the adoption of the constitution. The other prohibition, to "make anything but gold or silver coin a tender in payment of debts," is but a member of the same subject of currency committed to the general government, and prohibited to the states. And the same remark applies to it already made as to the other two. The prohibition is not, that no state shall pass any law, but that even if a law does exist, the "state shall not make anything but gold and silver coin a legal tender." The language plainly imports that the prohibited tender shall not be made a legal tender, whether a law of the state exists or not. The whole subject of tender, except in gold and silver, is withdrawn from the states. These cases cannot, therefore, furnish a sound rule of interpretation for that clause which prohibits the states from passing laws "impairing the obligation of contracts." This 329*] *clause relates to a subject confessedly left wholly with the states, with a single exception; they relate to subjects wholly withdrawn from the states, with the exception that they may pass laws on the subject of tender in gold and silver coin only.

The principle that the association of one clause with another of like kind may aid in its construction is deemed sound; but I think it has been misapplied in the argument. The principle applied to the immediate associates of the words under consideration is, I think, decisive of this question. The immediate associates are the prohibitions to pass bills of attainder, and ex post facto laws. The language and order of the whole clause is, no state shall "pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts." If the maxim noscitur a sociis, be applied to this case, there would seem to be an end of the question. The two former members of the clause undeniably prohibit retroactive legislation upon the existing state of things at the passage of the prohibited laws. The associated idea is that the latter member of the same clause should have a similar effect upon the subject-matter to which it relates. I suppose this was the understanding of the American people when they adopted the constitution. I am justified in this supposition by the contemporary construction given to the whole of this clause by that just celebrated work styled the Federalist, written at the time for the purpose of recommending the constitution to the favor and acceptance of the people. In No. 44 (p. 281), commenting upon this very clause and all its members, the follow-

ing observations are made: "Bills of attainder, ex post facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the state constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters."

Did the American people believe, could they believe, these heavy denunciations were leveled against laws which *fairly prescribed [*330 and plainly pointed out to the people, rules for their future conduct; and the rights, duties and obligations, growing out of their future words or actions? They must have understood that these denunciations were just, as regarded bills of attainder and ex post facto laws, because they were exercises of arbitrary power, perverting the justice and order of existing things by the reflex action of these laws. And would they not naturally and necessarily conclude, the denunciations were equally just as regarded laws passed to impair the obligation of existing contracts, for the same reason?

The writer proceeds: "Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights; and I am much deceived if they have not, in so doing, as faithfully consulted the genuine sentiments, as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and with indignation, that sudden changes and legislative interferences in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators; and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the link of a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society."

* * * * * * * * * *

It proves that the sages who formed and recommended the constitution to the favor and adoption of the American people, did not consider the protection of private rights, more than the protection of personal security, as too insignificant for their serious regard, as was urged with great earnestness in argument. In my judgment, the language of the authors of the Federalist proves that they, at least, understood that the protection of personal security and private rights from the despotic and iniquitous operation of retrospective legislation was, itself and alone, the grand principle intended to be established. It was a principle of the utmost importance to a free people about to establish a national government, "to establish justice," and "to secure to themselves and their posterity the blessings of liberty." This principle is, I think, fully and completely sustained by the construction of the constitution which I have endeavored to maintain.

* * * * * * * * * *

332*] *Mr. Chief Justice Marshall.

* * * * * * * * * *

In all these cases, whether the thing prohibited be the exercise of mere political power, or legislative action on individuals, the prohibition is complete and total. There is no exception from it. Legislation of every description is comprehended within it. A state is as entirely forbidden to pass laws impairing the obligation of contracts, as to make treaties or coin money. The question recurs, what is a law impairing the obligation of contracts?

* * * * * * * * * *

The counsel for the plaintiff insist that the word "impairing," in the present tense, limits the signification of the provision to the operation of the act at the time of its passage; that no law can be accurately said to impair the obligation of contracts, unless the contracts exist at the time. *The law cannot impair [*337 what does not exist. It cannot act on nonentities.

There might be weight in this argument if the prohibited laws were such only as operated of themselves, and immediately on the contract. But insolvent laws are to operate on a future, contingent, unforeseen event. The time to which the word "impairing" applies, is not the time of the passage of the act, but of its action on the contract. That is, the time present in contemplation of the prohibition. The law, at its passage, has no effect whatever on the contract. Thus, if a note be given in New York for the payment of money, and the debtor removes out of that state into Connecticut, and becomes insolvent, it is not pretended that his debt can be discharged by the law of New York. Consequently, that law did not operate on the contract at its formation. When, then, does its operation commence? We answer, when it is applied to the contract. Then, if ever, and not till then, it acts on the contract, and becomes a law impairing its obligation. Were its constitutionality, with respect to previous contracts, to be admitted, it would not impair their obligation until an insolvency should take place, and a certificate of discharge be granted. Till these events occur, its impairing faculty is suspended. A law, then, of this description, if it derogates from the obligation of a contract, when applied to it, is, grammatically speaking, as much a law impairing that obligation, though made previous to its formation, as if made subsequently.

* * * * * * * * * *

The idea admits of being pressed still farther. If one law enters into all subsequent contracts, so does every other law which relates to the subject. A legislative act, then, declaring that all contracts should be subject to legislative control, and should be discharged as the legislature might prescribe, would become a component part of every contract, and be one of its conditions. Thus, one of the most important features in the constitution of the United States, on which the state of the times most urgently required one on which the good and the wise reposed confidently for securing the prosperity and harmony of our citizens, would lie prostrate, and be construed into an inanimate, inoperative, unmeaning clause.

Gentlemen are struck with the enormity of this result, and deny that their principle leads to it. They distinguish, or attempt to distinguish, between the incorporation of a *general law, such as has been stated, [*340 and the incorporation of a particular law, such as the insolvent law of New York, into the contract. But will reason sustain this distinction? They say that men cannot be supposed to agree to so indefinite an article as such a general law would be, but may well be supposed to agree to an article reasonable in itself, and the full extent of which is understood.

But the principle contended for does not make the insertion of this new term or condition into the contract, to depend upon its reasonableness. It is inserted because the

legislature has so enacted. If the enactment of the legislature becomes a condition of the contract because it is an enactment, then it is a high prerogative, indeed, to decide that one enactment shall enter the contract, while another, proceeding from the same authority, shall be excluded from it.

* * * * * * * * * *

In the rudest state of nature a man governs himself, and labors for his own purposes. That which he acquires is his own, at least while in his possession, and he may transfer it to another. This transfer passes his right to that other. Hence the right to barter. One man may have acquired more skins than are necessary for his protection from the cold; another more food than is necessary for his immediate use. They agree each to supply the wants of the other from his surplus. Is this contract without obligation? If one of them, having received and eaten the food he needed, refuses to deliver the skin, may not the other rightfully compel him to deliver it? Or two persons agree to unite their strength and skill to hunt together for their mutual advantage, engaging to divide the animal they shall master. Can one of them rightfully take the whole? or, should he attempt it, may not the other force him to a division? If the answer to these questions must affirm the duty of keeping faith between these parties, and the right to enforce it if violated, the answer admits the obligation of contracts, because, upon that obligation depends the right to enforce them. Superior strength may give the power, but cannot give the right. The rightfulness of coercion must depend on the pre-existing obligation to do that for which compulsion is used. It is no objection to the principle, that the injured party may be the weakest. In 346*] society, the *wrong-doer may be too powerful for the law. He may deride its coercive power, yet his contracts are obligatory; and, if society acquire the power of coercion, that power will be applied without previously enacting that his contract is obligatory.

Independent nations are individuals in a state of nature. Whence is derived the obligation of their contracts? They admit the existence of no superior legislative power which is to give them validity, yet their validity is acknowledged by all. If one of these contracts be broken, all admit the right of the injured party to demand reparation for the injury, and to enforce that reparation if it be withheld. He may not have the power to enforce it, but the whole civilized world concurs in saying that the power, if possessed, is rightfully used.

In a state of nature, these individuals may contract, their contracts are obligatory, and force may rightfully be employed to coerce the party who has broken his engagement.

What is the effect of society upon these rights? When men unite together and form a government, do they surrender their right to contract, as well as their right to enforce the observance of contracts? For what purpose should they make this surrender? Government cannot exercise this power for individuals. It is better that they should exercise it for themselves. For what purpose, then, should the surrender be made? It can only be that government may give it back again. As we have no evidence of the surrender, or of the restoration of the right; as this operation of surrender and restoration would be an idle and useless ceremony, the rational inference seems to be, that neither has ever been made; that individuals do not derive from government their right to contract, but bring that right with them into society; that obligation is not conferred on contracts by positive law, but is intrinsic, and is conferred by the act of the parties. This results from the right which every man retains to acquire property, to dispose of that property according to his own judgment, and to pledge himself for a future act. These rights are not given by society, but are brought into it. The 347*] right of coercion is necessarily *surrendered to government, and this surrender imposes on government the correlative duty of furnishing a remedy. The right to regulate contracts, to prescribe rules by which they shall be evidenced, to prohibit such as may be deemed mischievous, is unquestionable, and has been universally exercised. So far as this power has restrained the original right of individuals to bind themselves by contract, it is restrained; but beyond these actual restraints the original power remains unimpaired.

This reasoning is, undoubtedly, much strengthened by the authority of those writers on natural and national law, whose opinions have been viewed with profound respect by the wisest men of the present and of past ages.

Supposing the obligation of the contract to be derived from the agreement of the parties, we will inquire how far law acts externally on it, and may control that obligation. That law may have, on future contracts, all the effect which the counsel for the plaintiff in error claim, will not be denied. That it is capable of discharging the debtor under the circumstances, and on the conditions prescribed in the statute which has been pleaded in this case, will not be controverted. But as this is an operation which was not intended by the parties, nor contemplated by them, the particular act can be entitled to this operation only when it has the full force of law. A law may determine the obligation of a contract on the happening of a contingency, because it is the law. If it be not the law, it cannot have this effect. When its existence as law is denied, that existence cannot be proved by showing what are the qualities of a law. Law has been defined by a writer, whose definitions especially have been the theme of almost universal panegyric "to be a rule of civil conduct prescribed by the supreme power in a state." In our system, the legislature of a state is the supreme power, in all cases where its action is not restrained by the constitution of the United States. Where it is so restrained, the legislature ceases to be the supreme power, and its acts are not law. It is, then, begging the question to say that, because contracts may be discharged by a law proviously enacted, this contract may be discharged by this act of the legislature of New York; for the question returns *upon us, [*348 is this act a law? Is it consistent with, or repugnant to, the constitution of the United States? This question is to be solved only by the constitution itself.

In examining it, we readily admit that the whole subject of contracts is under the control of society, and that all the power of society over it resides in the state legislatures, except in those special cases where restraint is imposed by the constitution of the United States. The particular restraint now under consideration is on the power to impair the obligation of contracts. The extent of this restraint cannot be ascertained by showing that the legislature may prescribe the circumstances on which the original validity of a contract shall be made to depend. If the legislative will be that certain agreements shall be in writing, that they shall be sealed, that they shall be attested by a certain number of witnesses, that they shall be recorded or that they shall assume any prescribed form before they become obligatory, all these are regulations which society may rightfully make, and which do not come within the restric-

tions of the constitution, because they do not impair the obligation of the contract. The obligation must exist before it can be impaired; and a prohibition to impair it, when made, does not imply an inability to prescribe those circumstances which shall create its obligation. The statutes of frauds, therefore, which have been enacted in the several states, and which are acknowledged to flow from the proper exercise of state sovereignty, prescribe regulations which must precede the obligation of the contract, and, consequently, cannot impair that obligation. Acts of this description, therefore, are most clearly not within the prohibition of the constitution.

The acts against usury are of the same character. They declare the contract to be void in the beginning. They deny that the instrument ever became a contract. They deny it all original obligation; and cannot impair that which never came into existence.

Acts of limitations approach more nearly to the subject of consideration, but are not identified with it. They defeat a contract once obligatory, and may, therefore, be supposed to partake of the character of laws which impair 349*] its *obligation. But a practical view of the subject will show us that the two laws stand upon distinct principles.

* * * * * * * * * *

The answer is, that if the law goes farther, and annuls the obligation without affording the remedy which satisfies it—if its action on the remedy be such as palpably to impair the obligation of the contract—the very case arises which we suppose to be within the constitution. If it leaves the obligation untouched, but withholds the remedy, or affords one which is merely nominal it is like all other cases of misgovernment and leaves the debtor still liable to his creditor, should he be found, or should his property be found, where the laws afford a remedy. If that high sense of duty 353*] *which men selected for the government of their fellow-citizens must be supposed to feel, furnishes no security against a course of legislation which must end in self-destruction; if the solemn oath taken by every member, to support the constitution of the United States, furnishes no security against intentional attempts to violate its spirit while evading its letter, the question how far the constitution interposes a shield for the protection of an injured individual, who demands from a court of justice that remedy which every government ought to afford, will depend on the law itself which shall be brought under consideration. The anticipation of such a case would be unnecessarily disrespectful, and an opinion on it would be, at least, premature. But, however the question might be decided, should it be even determined that such a law would be a successful evasion of the constitution, it does not follow that an act which operates directly on the contract after it is made, is not within the restriction imposed on the states by that instrument. The validity of a law acting directly on the obligation is not proved by showing that the constitution has provided no means for compelling the state to enforce it.

* * * * * * * * * *

It is also worthy of consideration, that those laws which had effected all that mischief the constitution intended to prevent, were prospective as well as retrospective in their operation. They embraced future contracts as well as those previously formed. There is the less reason for imputing to the convention and intention, not manifested by their language, to confine a restriction intended to guard against the recurrence of those mischiefs, to retrospective legislation.

The Purchase of Manhattoes from the Indians by Peter Minuit
From the Original in the Possession of W.T.Gridley

CHAPTER FIVE

Inseparable Trinities

GOD

RELIGION—CHURCH—COMMANDMENTS.

CONSTITUTION

LIBERTY—EQUALITY—JUSTICE

God's book of Laws, the Bible, was intended to, and should be the foundation and governing power of our churches. The paramount and fundamental laws of that Holy Book are

THE COMMANDMENTS.

Christ's own admonition is "Keep Ye My Commandments." So saith the law, and so it was intended to be.

This book deals with three broken commandments. It treats of man-made laws, which, under certain circumstances, can make of the breaking of the Lord's Commandments, a legal transaction, simply by a lapse of time.

The author's intention was, to the best of his ability, and in the light of his investigation of this centuries-old controversy, to prove that Trinity Church, this representative of the Heavenly Father on earth, did break three of His Commandments when it took from the children of Anneke Jans Bogardus the farm of sixty-two acres on Manhattan Island, and for such breaking of God's commands, is it not unfit to serve as a temple of the Almighty?

God's book says "Thou shall not covet." If coveteousness is followed by the taking of the coveted object, where in God's book can you find a law which states, that time will efface that despoilation or make it legal? Is not a church which breaks its own laws, placing mundane matters first, unfit to administer to the souls of men? Does it not lose its influence upon mankind? How can such a church teach a polity it will not follow itself.

One hears of many churches and ministers referred to as doing much work for the Lord, in the personal way—the personal touch. New Yorkers are proud of old Trinity, it represents the touch of Colonial days, they are proud of its wealth, its influence, its power, but I doubt if you can point to one instance where the weary wayfarer, the heartsick wanderer, the footsore, the down-and-outer, that element of our unfortunate brethren with which New York is over run, has found a haven of rest within the portals of old Trinity. Pass in there with me, can you imagine a man so far forgetting himself as to fall on his knees within that portal and cry out to his Maker "God be merciful to me a sinner." If he did, I can in fancy see the old sexton come and tap him on the shoulder and say "Yes, yes, my man, I know, but the Salvation Army is just around the corner and that's the place for that prayer, not here, not here." Hark, what is that? Voices: "Lord when saw we thee hungry, or athirst or a stranger, or naked, or sick, or in prison, and did not minister to thee?" And a voice answers "Verily I say unto you, inasmuch as ye did it not unto one of these least, ye did it not unto me."

Such is Trinity Church, the lip-service, man-pleasing, show church of New York City.

I learned at my mother's knee, as did you, no doubt, dear reader, to lisp the words

"Now I lay me down to sleep
I pray the Lord my soul to keep."

I too, as did you, went to Sunday School, there to be taught the way of truth and life, to serve God, and to keep His Commandments; and when at man's estate, I too felt, as do you perhaps, that to serve the Lord thy God with all thy heart, with all thy soul and with all thy strength I had to go to church, for was not the church the sacred footstool of God upon this earth? All these things did I do until I ran amuck of Trinity Church, when I saw the bared fangs, when I felt the steam roller, and learned for myself what a vast amount of hatred, vindictiveness, cruelty and persecution can be covered by, and rest beneath the voluminous cloak of religion.

When the trumped up charges were presented to the Bar Association in regard to my work on the Bogardus matter, who was it fostered and helped that conspiracy, and sent out into the highways and byways looking for possible witnesses to help them in their nefarious scheme? Trinity's lawyers. When those trumped up charges were sustained by the Grievance Committee, who was it assisted the prosecutor upon that trial? Trinity's lawyers. What did they know of the work I was doing? Nothing, absolutely nothing; but because everyone who had ever been connected with the Bogardus descendants had promised them a settlement, or a suit, I must be doing the same thing, even in the face of the fact that several receipts for amounts of money were presented on that trial, and everyone of them read "For investigation and not for suit." (Plate Forty-four). With no witness from among those who had retained me to conduct this investigation, the word of Trinity's lawyers was taken that I was fostering illegal litigation. In answer to my claim that I was simply investigating, I am told there is nothing to investigate. Well, dear reader, I will ask you now whether there was anything to investigate on the Bogardus side of the story?

Therefore have I charged, and do now charge, that Trinity Church is responsible for the loss of my sheepskin, for in the face of the true facts, nothing but influence could have brought about that disbarment. Every conceivable piece of evidence, every scrap of paper, made it as plain as the nose on your face that my work was nothing but an investigation, and that I had promised nothing by way of a suit.

Therefore, was this church responsible for that acute suffering which only a brother attorney can understand, the loss of my sheepskin. No matter how justified I may have felt was the cause I espoused, I was tainted through the machinations of that church—think of it! "Thou shalt not bear false witness against thy neighbor."

I met that disbarment in all my walks of life. When I went into the manufacturing business, the first thing I was met with when I asked for credit was, that the man-

(57) Received (13) NY City Feby 5th 1915
from Wm L Avery
One and no/00 Dollars
& Jans investigation expenses & not for suits
$ 1.00 — W. J. Gridley Atty

(28) Received (3) NY City Sept 6th 1915
from Wm L Avery
Five and no/00 Dollars
& Jans investigation expense not for suit
SEP 6 1915
$ 5.00 — W. J. Gridley Atty

(805) Received (25) NY City October 1st 1915
from Mrs Amanda Melissa (Pence) Brink
Five and no/00 Dollars
& Jans investigation & not for suit
OCT 1 1915
$ 5.00 — W. J. Gridley Atty

(444) Received (18) NY City Jany 11th 1916
70/411
from Mrs Amanda M Brink
Ten and no/00 Dollars
for disbarment defense Jans matter - not for suit
JAN 11 1916
$ 10.00 — W. J. Gridley Atty

(799) Received
70/411
Thru C. 9-13-16 11-9-16
NY City Jany 20th 1917
from Mrs Amanda Melissa Brink
Fifty no/00 for Pleller Nov 9th 1
Dollars
for disbarment defence - & not for suit
$ 50.00 — W. J. Gridley Atty

Plate Forty-four

ager of the business was a disbarred attorney. Through a friend I was brought to realize the effect it was having on the credit standing of the company, and for the protection of that company, and that alone, I buried the name "Gridley" and took the name "Anderson." That was bitter medicine to swallow, for I was proud of my name, I had no cause to be otherwise, but I took this dose, as I had taken the rest, standing and facing the world fortified by my inner conscience that I had done no wrong. Do you wonder, dear reader, that I was a bitter, disillusioned man?

I indeed was. Through the destruction of my reverence for the church by the breaking of God's commands, through the persecution of that church during my disbarment action, through the loss of my profession, my money, my position, aye, my all. I crept within myself, hugging my sorrow within my own breast, taking comfort from no one, and surely not from God, a lonely, desolate human soul, when suddenly there came a change, it came from these words "Thou art Peter and upon this rock will I build my church." (Matt. 16 c. 18 v.) My load fell from my shoulders, much as old John Bunyon's in Pilgrim's Progress, and I was brought truly within the comforting and sheltering arms of the Divine Healer of all hurts. I learned that underneath all our weight of sorrow and sufferings are the Everlasting Arms. Hence came my comfort not from the edifice of brick and stone, which in infancy I had been taught to revere, but which in my sorrows I had learned to curse, it came from the knowledge that my church was within my soul, and that there could be no desecration there, but of my own making. Flesh and blood Peter. God the Father had made Peter the foundation the rock of his church.

Soon I found many Peters in this dear old world, all with their church within their hearts waiting to befriend me, fellowmen whom I had not been able to see in my sorrow.

Thus did I lose that load of care, and learned truly the heavenly blessing in these words, "Blessed are ye when men shall revile you, and shall persecute you, and shall say all manner of things against you falsely." I learned to rejoice and be exceedingly glad. My reward, my comfort, my inspiration came from the consciousness that I was not guilty of breaking either man-made or God-made laws.

Right there, dear reader, I planted my Ebenezer stone, and I have not turned back, for it is written "To him that overcometh will I give of the hidden manna, and I will give him a white stone, and upon that stone a new name written, which no man knoweth, but he that receiveth." I am striving for the reward of that white stone.

Strange, is it not, that when I gratuated from Yates Academy, before I went to Cornell, I chose as my thesis "The Power of Circumstances." That thesis has recurred to my mind many times within the past ten or fifteen years. Circumstances has certainly played some strange pranks with my life. The defense of Fonda, bringing me into the Bogardus matter, my disbarment, and now this later cross to bear, this unjust, illegal indictment and conviction. I say illegal advisedly, for all my constitutional guarantees were ignored when this matter was brought before that Grand Jury. And, as in my disbarment, there were no witnesses produced who could testify that my work was other than an investigation, so upon the trial under this illegal indictment, in which I am charged with promising some of these Bogardus descendants the evidence upon which they could and would recover New York property, not one scintilla of evidence was adduced to substantiate the charges in that indictment. But—I was convicted.

I am now of the firm conviction I am the instrument in the hands of the Almighty God, to make public this desecration of the true intent, meaning and purpose of a church. The members of the organization financing this publication, and myself, have been compelled to make great sacrifices to keep this work alive, but they have been willing sacrifices, at least upon my part, secure in my belief that it is my duty to publish the true story of the taking of this property to the world. Churches must be governed by the law of God, not of man. Churches, if they do not perform their rightful functions, to so live and have their being that they may kindle in the minds and hearts of poor wandering souls the desire to serve the Lord of Hosts, I say if they cannot do that, then they should no longer be allowed to serve as religious institutions.

There is no doubt in my mind, but what the Bogardus descendants have been sacrificed again, and again. After reading Bogardus against Trinity[6] and Humbert against Trinity[7], you must yourself be convinced that Bogardus lawyers have certainly made some mistakes in their pleadings, whether intentionally or not it is not for me to say. These cases are continuously cited by Trinity and its friends, the press, and I myself do not wonder at it for they are an achievement in power and influence. However, it is well to bear in mind that the defendant in these cases is a church, and in all the defense set up is adverse possession—the taking advantage of one's own wrong. A man-made law, making out of an unholy wrong, a legal transaction. Have you much respect for a Church of God that would enter such a plea?

Investigation, many interviews had with some of the oldest living descendants, and the articles in the public press and magazines, led me to the firm conviction that what these people needed was knowledge—knowledge of their own matter; knowledge of the real facts having to do with the passing out of this title to the Bogardus farm, originally standing in the name of the children and heirs of Anneke Jans Bogardus. I found that with few exceptions, the descendants of this illustrious pioneer have gone into this or that movement, which promised them a recovery of this property, never thinking that if this had been so easy of accomplishment, this controversy would not be alive today.

I found in my investigation that almost all of them had been told by their parents that Anneke Jans Bogardus had owned a farm on Manhattan Island; that the farm had been taken by Trinity Church, but where the farm was located, few of them knew. The erroneous impression as to the location I found usually came from the reading of newspapers and the like, all of which, without any exception, would recite that such and such a party was laying claim to the financial district, the ground upon which Trinity Church was built, the Singer Building, Woolworth Building, Metropolitan Building, etc., and this despite the fact that the self same paper would recite that the Anneke Jans Bogardus farm contained but sixty-two acres, and Trinity Church is some eight miles from the Metropolitan Building.

Early in my connection with the Bogardus matter I became deeply interested, for it is a most fascinating work. I felt within me the urge to complete an investigation of this "Lost Cause," and to publish the facts in regard thereto, backed up by the certified proof. Unfortunately, however, after my disbarment I did not have the requisite finances, and somewhat like Upton Sinclair, mine was not the kind of a story the publishers want. I am beginning now to think there are others who do not want this story published, but if our mouths are to be closed and the pen silent, what then has become of our prated liberty, our freedom, our justice.

We must have as a nation neither commercial politics nor commercial religion; for if we have the one, or suffer it, suffice it to say we shall have the other in thousand fold force.

There is no curb to the human mind, save belief in God Almighty. With mammon as our God the very foundations of our national being are tottering and sick.

Are we going to allow human rights, liberty and freedom to be crushed to the earth without raising our voice? Are we going to allow property rights, a moneyed oligarchy to be enthroned in our land? That is the all-important question before the American people, into which all others are resolved, a question often, far too often lost sight of in consideration of detail, but which, ever present, cannot safely be ignored. To do so is to open a way for the enslavement of the industrial classes, the undermining of the Republic, and the destruction of what America stands for

EQUALITY! LIBERTY! FREEDOM! JUSTICE!

Life, liberty and property are equally sacred to all men, all, therefore, claim an equal protection from the laws.

Such is the Republican form of government. It is founded on public opinion and rests principally for its support on the people. But how few are the people who raise their voice against political oppression? How few are the people in this day and age who have swung as the pendulum to the extreme of being alive with vigilance and attentive to their liberties. Rather are they timid and fearful of the consequences of raising their voices in defense of threatened privileges.

In a free country, such as ours, a man has a right to form opinions on all public matters, on all laws, and to express that opinion, either in writing or by word of mouth.

Are we, as a people, becoming indifferent, careless, deficient in appreciation of this wonderful gift of self-government, so dearly bought by our forefathers? Why is it we have allowed powerful influences to work silently and surely for years, until we find that with decided aggressiveness they govern the political, industrial and religious world? Are we going to continue in this lazy stupor, until we find that like the parable of the talents the reward goes to the one who uses the gift—the talent—and we find ourselves in political slavery, caused by our want of interest in that which was passed into our sacred keeping, self-government.

Are we particular to give our vote and elect to office men who are duly qualified for such a trust? Are we particular that they are men free and untrammeled of influences, or do we not just blindly vote for men chosen by our own political party, without caring for their affiliations or obligations, without regard to whether that man owes obedience to influences which would preclude him from serving any other than the interests of those who are pushing him for office.

It is an estimable privilege we have of appointing our own officials, but, great as is this privilege, how easily may it be abused? How often in the choice of those officials, men are influenced either by their party, or by private pique or resentment, or some other selfish motive to neglect men of known and tried abilities, and of the best characters, and in their stead advance those to public trust who are not worthy, simply to please the greatest powers and influences of the times.

When making provision for future safety and happiness, the framers of our Constitution had many forms of Government from which to select; therefore they duly deliberated in their choice. The form adopted is the most congenial with the views of an enlightened people, who have the consciousness that they were born free; for when God gave life, he gave liberty at the same time; therefore cometh the desire so to live.

Let us glance at the pioneers of America, and among them must be numbered those who inspired this work, Anneke Jans Bogardus and her family. The opinion has often been erroneously maintained that our early Americans sprang from the dregs of the country from which they emigrated. Erroneous indeed, for the best blood of Holland, England, France and Spain came to these shores for what? Wearied by religious and political strife in their own countries, they embarked with their household goods and their families, bound for a land in which they could found an empire, and build a government which was to be the envy and admiration of the world. They brought with them love of civil and religious liberty. They came to America to plant their Ebenezer stone. In what they planned and did they stood for the welfare of the community as one family; they sought the good of posterity, and laid the foundations for that purpose so dear to the heart and home of every American "Liberty and Union now and forever, one and inseparable!"

Let us not pass this period in our history, so momentous in shaping the destiny, and placing the cornerstone of our Great Republic, without asking ourselves whether we are keeping alive those precepts for which so many made the supreme sacrifice. Are we keeping our blessed land free of the shackles of oppression and despotism? Are our patriots to have sacrificed in vain, those crusaders of independence and of the union, who fought, bled, suffered and died that you and I, the comers after, might enjoy the fruits of their sacrifices? They blazed the trail that the unborn millions should live and have their being free and untrammeled of the troubles which had beset them and made their existence difficult; that where American Liberty first raised its standard, there it should live, full of an unconquerable spirit in the strength of a glorious peoples.

We the unborn millions of those troublesome times have inherited what? The right to independence, the right to liberty, equality and justice. Are we studious in preserving those rights?

How far have we transgressed from the fundamental principles enunciated in our bill of rights? Present indications would show that we have traveled far from the true intent and purpose of the Constitution, as far away as the Children of Israel traveled from the God of their Fathers when they turned to the worship of idolatrous gods. All the warnings God sent were unheeded, and were insufficient to bring back to the true God, and it took seventy years of servitude to bring them back to the true God, since which tremendous judgment they have never as a peoples practiced idolatory.

We can learn a lesson from the Jewish people, for have we not done the same thing in a more modern way? Have we not turned aside from the true intent and meaning of self-government, handed down to us through a perfect deluge of death and destruction?

The present age is filled with profligate treachery and violence, why? Law enforcement is at fault. Outrages upon the dearest rights of freeman, which we ourselves have experienced, and by we I mean this organization and myself, impresses us more than any historical facts that the kingdoms of this world are frequently administered by injustice.

This should lead us the more to contemplate the citizenship of Jesus and His Kingdom, the administration of which is perfect, for Jesus was the perfect citizen. Jesus lived at

the very center of life, where throbbed the soul of God, sending its vital fluid to the very extremity of society. Jesus was as good a citizen in the slums as he was in society, for He had the genuine contact between Heaven and whatsoever place His life was cast. Instead of oppressing mankind, he breaks in pieces the oppressor. Instead of being a scourge to the human race, he is a hiding place from the wind, a covert from the tempest as rivers of water in a dry place, as the shadow of a rock in a weary land. Instead of spreading desolation, He comes down like rain upon the mown grass as showers water the earth. That is the spirit of the Divine Healer, and such should be the spirit of true religion on this earth.

Trinity's part in the disbarment of the author of this book is a fitting sequel to the wrongful taking of the Bogardus Farm, the breaking of God's laws, for which they have but the one defense ADVERSE POSSESSION. I used to think in my old fashioned idea of the church and its uses, that there must have been a time in the history of this church when the conscience of those participating in this unworthy taking, revolted against the breaking of these commandments, revolted against the crime perpetrated against these children. Yes, I felt there must have been that time, or else they were beyond even the fear of God himself. Not now. I can say in all sincerity that I believe this church has always and will always, until God's arm reaches out, glory in their political power and influence, glory in the fact that they can keep the public mind appeased and divert the condemnation of the world with the cry of "Oh Lord we give tythes of all we possess" build churches, endow colleges and schools, with what? What was the foundation of that great wealth. The farm that in 1714 Rector Vesey was asking the Bishop of London to make safe for Trinity, "which would be easy then, but hereafter not."

Woe unto you, scribes and pharisees, hypocrites, for ye devour widow's houses, and for a pretense make long prayers; therefore ye shall receive the greater damnation! (Matt. 23, v. 14).

Woe unto you, scribes and pharisees, hypocrites! For ye pay tythe of mint and anise and cummin, and have omitted the weightier matters of the law, judgment, mercy and faith. (Matt. 23, v. 23).

Let us pray to the God of Liberty and of Justice, he who has placed in our hearts this desire for freedom for power, to keep our blessed land free and unfettered from the god of mammon; that our laws may be administered with that strict regard for equality and justice, so that rich and poor alike may feel the blessed presence of their protecting cloak; that our law givers may awake to the fact that there is abroad in our land an element which is destroying the very fundamentals of our government, and instead of law enforcement, are creating, through oppression and persecution, bad citizens out of good.

Trinity Church may have hoodwinked the world into thinking she had a perfect legal right to take and hold that which belonged to her neighbor, but she cannot hoodwink God. Remember the only foundation for moral sentiment and judgment, is religion, and the one institution which exists to keep religion alive among us is the Church.

Faith in God, reverence for his law, gives us our standard for right and wrong. Faith and reverence, two wonderful words, but if after perusing these lines you can find therein any faith in God or reverence for His law portrayed in what Trinity has done to the Bogardus family, then I have not the slightest conception of what the definition of these words mean.

Edwin Davies Schoonmaker, describes Trinity Church in manner following:

In vain she points her finger to the sky,
And sends her voice along the famous street
Admonishing how the mortal hours fleet,
And bidding man men bethink that they must die
Tearing the coat of Christ they jostle by
And ply their gambling at her very feet.
"Prepare, prepare, prepare thy God to meet!"
She loudly calls. They do not heed her. Why?

Thou, stuffed with tithes of them that traffic here,
Flesh of their flesh and with thy spotted hand
Buying and selling, fattening year by year,
How darest thou rebuke this venal band?
Thou mocker of the man of Galilee
Prepare to meet thy God, thou Pharisee.

(Taken from pages 392-3 of Upton Sinclair's Cry for Justice.)

PART TWO

Resolution Passed May 10, 1910

Resolved "to recommend to the Vestry that the firm of Jay & Candler be employed to procure information regarding the conduct of certain lawyers and other persons, who are soliciting contributions from the heirs of Anneke Jans, representing that there is a valid claim on behalf of these heirs to property now in the possession of this corporation and that the said firm of Jay & Candler be authorized to take such steps as they may deem best to expose the unlawful actions of these lawyers and other persons, by bringing the matter to the attention of the Appellate Division of the Supreme Court and of the authorities of the United States Post Office, and to take such other steps as they may deem wise and proper in the premises."

Trinity's gate! it stands ajar;
But through its portals gleaming
No radiance of the cross afar
No Saviour's love revealing.

INDICTMENT

CONVICTION

What hath the grey-haired prisoner done?
Hath murder stained his hand with gore?
Oh no! His crime's a dark one,
God made the old man poor.

FIVE YEAR SENTENCE

INTRODUCTION

Crook! My government, your government, says that I am a crook! That I have been defrauding the Bogardus descendants out of vast sums (the sum not being stated or proven in this case) by leading these people to believe that on an investment of forty to fifty dollars each, they could and would recover Trinity's property; in other words, millions if not billions.

This, in spite of the fact that the tools used by the government sat side by side in their society meetings, with the very witnesses used for the defense, who testified that they gathered nothing from the plans and purposes of the organization, than a book to be used for knowledge, a fund, and public opinion.

How does this sound to you?

The word of less than a dozen disgruntled, induced or bought turncoats, taken against the word of at least twice that number used upon the trial by the defense, and some fifteen hundred members ready, waiting and willing to testify.

That is not all of the proposition. This forty or fifty dollars paid by some members (except of course in cases where members bought more than one book) received in the one hand, to be paid out by the other, to meet the expenses of publishing their family history!

Think of it! For the privilege of handling these funds I am a crook!

Outside of the membership and advance book subscription funds, every penny raised by the members of this organization was raised for a specific purpose, and was used for that purpose, unless subsequently voted by resolution to be used for other purposes, generally to support and defend their right to publish this book—a constitutional right.

Since the early part of 1928 the organization have had a custodian of their funds. More funds have been raised to defend the organization and their right to publish this book, than was ever raised for the publication itself, and all disbursed by them, through their own committee.

A crook! A crook is at least supposed to be clever enough to practice his wiles and ingenuity for his own benefit.

Instead of a crook, in my opinion, I made a grave mistake, in having lost my sheepskin, and standing the major part of the expenses of that disbarment, I did not stick to my resolution to have nothing whatever to do with the matter again. I had no business to yield, and offer to give them the only thing I had left, the results of that investigation.

After refusing three or four times, I let that human proclivity, vindictiveness, get the upper hand of me. Smarting under that disbarment, I saw a chance, and told them I would give them the results of my investigation in book form; they accepted that plan.

I understand I've been accused of whining—of playing the martyr. God! Nothing is more foreign to me. If I had been that kind, I had the opportunity to run before my disbarment. If I had been that kind, I had the opportunity to run when advised that if I came to Michigan I would be arrested.

I ran right for the seat of trouble, and that should answer those despicable malcontents who can find nothing else to do with their lives, than to pass through and manufacture all the disturbance possible.

I'm neither a martyr, nor do I whine, but I am asking where in the world is the proof of my being a crook? Where in the world are the results of that particular profession? I, who today, am the poorest of them all, living entirely on the bounty of this organization, those blessed friends who would not barter truth and honor, and but for whom I would today be in Leavenworth.

When all the facts are known, it would seem to me I would rather have my lot to face, than the awakened conscience of these turncoats when their stultified minds awake to the crime they have committed.

I'm not posing as a martyr, but I do think I have a right to raise my voice against inhuman oppression, against lying tongues, who joined this organization with a pledge in their hand, and a lie on their lips.

I ought to have been able to read human nature better than I did. I ought to have realized that no matter what I did for these people, I would be persecuted and prosecuted; that whatever I did would be fraudulent, or made to be fraudulent, if influence could do it, simply because I do not agree that Trinity Church has a clear paper chain of title to the Bogardus farm.

Crook! To lose a good manufacturing business, to establish which took five years' hard labor, following my disbarment, by trusting these people to live up to their part of the arrangements, which were:

To provide a place to do the work;

Bring my library down to date;

Pay for the research books, maps, documents, etc.

Pay the publication cost;

Pay the agreed overhead, rent and etc., the items of which were estimated with their attorney; reported back to them, and agreed upon;

I was to write the book at night, so as not to interfere with my business;

That they would not use my name in any manner;

That I should not carry on correspondence with anyone;

That all communications should be through an intermediary, and that intermediary their attorney, Mr. Grover.

Crook! Because I believe injustice has been the lot of this family.

Because I believe these people never had a square deal.

Because I believe they lacked knowledge, and were groping around in the dark, in a maze of misunderstanding.

Because I believed that if the true facts were brought to the attention of the God-fearing, christian world, this church would at least be punished for what had been done.

Because I believed that to publish the records and proofs, etc., the result of my investigation work, in a book, I was injuring no one.

Because I believed the plan of publishing this book, by a disbarred attorney, precluded any sane man from thinking that I could deliver or recover any property with that book.

Because, I believed that every man who is not an inmate of an insane asylum, is supposed to know the law, and to have the knowledge that in the United States of America, no attorney could promise a recovery in anything, much less a disbarred attorney, who could not practice in our courts.

Because I believed that our courts would stamp any person, running at large, who asserts that he believed that publishing a book implies the recovery of the subject matter of that book, a farm, is either a rogue, or a fit subject for a feeble-minded institution.

Because I believed that our courts could not give credence to any evidence or assertion by anyone claiming he believed an individual could or would recover property for him, without resorting to our courts, over which no one has control or dictation as to recoveries, yes, not even the President of the United States, and that any such deliberate assertion, implied deception, is evidence of playing the fool, either out of malice, or for gain, or other ulterior object.

Crook! Nearly every member in the organization, particularly those members used for government witnesses, joined before they ever saw me.

Crook! When there is not a scintilla of evidence that I did as charged in that indictment, promised them anything besides a book, even going to the extent of compelling them to pledge themselves to forget suits, settlements and the like, so long as I had any connection with them.

Crook! Read the contents of the speeches I have made, which are printed in this book, and I challenge you to find the most infinitesimal thought, pointing to a guarantee of recovery of the New York property for these people.

Does a crook safeguard his victims?

Crook! For making the plan that they should do nothing until they had raised sufficient money to take their book, their history to the best attorneys in the states in which they have units? What earthly reason was there for them to hold their book for a year, if it was not so that they would not run hither and there, but would wait and get the legal opinions at the same time and be guided by them? Knowing that they would never be satisfied without that opinion, I harnessed that desire to a concerted plan and purpose, and that spells that they could and would recover New York property. Does the plan of taking that book to an attorney for an opinion spell "would recover?"

Do the words "Battle," "Fight," "Bogardus War," spell a "could and would" recover, or just the reverse?

Do the words that "the book would do them more good than a thousand lawyers" spell "would recover."

Do the words "Create and invoke public opinion" spell a "could and would" recover New York property?

If there is any fraud in this matter, I am the victim, for in accepting my terms, I thought they agreed to forget suits and settlements; that they were content to wait for the finances to get the sort of an opinion they would respect; that in signing their pledge, their questionnaire, they were concluded by that signature, and precluded from ever after making any claim that I had promised anything more or less than contained in those papers.

If any promise of the recovery of this property was made to obtain money, it was not made by me.

I have not requested money. They contracted to finance the publication of the book. No organization work was ever done by me; that was their problem, and they battled against much opposition. I was in no position to know what, if any, inducements were held out to the different members, and can be charged only with the knowledge of what the different membership papers portray, and certainly no one will say that anything contained therein states that any evidence will be furnished upon which anyone could or would recover property. The iniquity of this whole prosecution, is the government tacking on to those papers, by the use of influenced or bought testimony, the inherent desire of these people, backed up by what they call recollections of something they claim I have said five years ago; when those sitting in the same meeting, hearing the same words, gathered from those self same words nothing but a promise of the results of five years' investigation of the Bogardus matter, in book form.

Think of it, in the face of repeated refusals to discuss this matter privately, for my own protection; refusing to answer questions unless put in the public meetings, after I had talked to them; refusing even to be present when any business was being transacted, I was accused by those few used by the government to bolster up this charge of fraud, that I had talked with them privately; that I created inharmony in their ranks, and interfered with their business.

Crook! Do you think I could hold the confidence of these people after that fiasco down in Detroit, Michigan, if I had in any manner deceived them.

Crook! Do you think if I had promised them the evidence in this book that "could and would" recover for them the New York property, there would be hundreds of these members offering, aye, eager, to go on the stand and refute the charges made in that indictment?

Do you think these people, if the charges in that indictment were true, would have raised and expended the vast sums of money they were compelled to raise and expend, during the years 1927, 1928, 1929, all of which finances they disbursed themselves, if I had deceived them?

Tell me why it is that the element back of this prosecution can get more consideration at the hands of the government than the members of this organization?

Before any indictment was rendered, when the first shot was fired, when the members received a letter from the Post Office Inspector in New York, they passed resolutions of confidence, and sent them with a request to Washington for a governmental investigation.

Did they get it? No.

These people are all good, American citizens, and I say that advisedly, for the members of this organization belong to other Nationally known organizations, such as Masons, Odd Fellows, B. P. O. E.'s and others; good, substantial business men and women, who, because of their resentment of this wholly unwarranted interference with their business, this unholy, dastardly, inhuman persecution and injustice, are raising their voices in protestation. Who will help them?

Crook! Why is it that a man who signs the pledge given within these pages, specifically stating one thing, is allowed to go on the stand, and after being sworn to tell the truth, the whole truth, and nothing but the truth, acknowledges that he signed that pledge and questionnaire, and then states that I talked to them privately and promised them the evidence upon which they could and would recover this New York property. Talked privately to six or eight people, something I never said to anyone else. Is this not preposterous?

Read that pledge!

Read the questionnaire!

Read the back of the advance book subscription and tell me how anyone could be deceived into thinking he was joining this organization for anything but a book.

Can you understand the attitude of the court, hearing that pledge and questionnaire read, hearing those witnesses testify they signed those papers, and then allowing perjury to be committed by those witnesses claiming that they had a diametrically different belief than those papers.

This is the crooked work! By people who have loaned themselves to the scheme of that outside organization, who are doing all in their power to prevent the publication of this story.

Long before the indictment was returned, these people asked for a governmental investigation, hoping thereby to stem the tide; but it was useless.

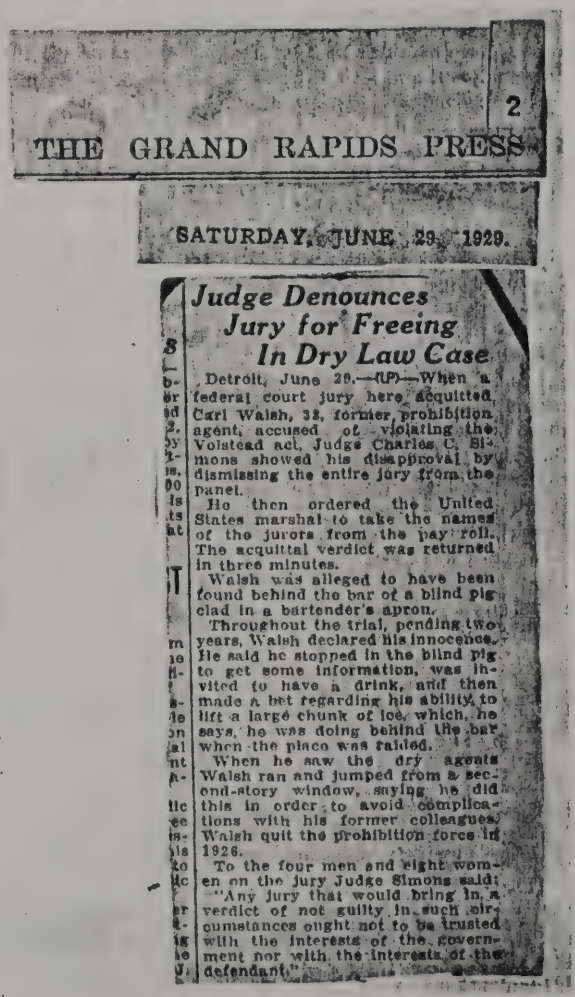
A resolution was then passed to employ an attorney to

try and evolve some legal way of taking care of this situation. We traveled one end of Detroit to the other to find an attorney who would take up the cudgels, but could find no one.

Then the indictment.

We had the same difficulty in finding an attorney. I well remember the remark of one of the most prominent attorneys in Detroit. I laid the facts before him, plainly, and I said, "Will you help me." He answered "Mr. Gridley, if I wasn't tied up in this matter of mine, I would, indeed I would, because Mr. Gridley, be it said to the shame of our country, Leavenworth is full of just such men, innocent men, who have been put there through influence."

Another gentleman in substance said "You must realize they are getting ninety per cent convictions over there." I said "How is that." "Well," he said "they have three panels of juries. A short one in the fall, then a November panel, which holds on for four or five months. When they get cases like your, they are put on for the end of this term, by which time they have gotten rid of all the non-convictors. In that way, you are practically convicted before you start. You are helpless. One man picks the jury, and they are mostly a political jury—friends of this or that one. If you are out of favor, you are out of luck."



2

THE GRAND RAPIDS PRESS

SATURDAY, JUNE 29, 1929.

Judge Denounces Jury for Freeing In Dry Law Case

Detroit, June 29.—(UP)—When a federal court jury here acquitted Carl Walsh, 32, former prohibition agent, accused of violating the Volstead act, Judge Charles C. Simons showed his disapproval by dismissing the entire jury from the panel.

He then ordered the United States marshal to take the names of the jurors from the pay roll. The acquittal verdict was returned in three minutes.

Walsh was alleged to have been found behind the bar of a blind pig clad in a bartender's apron.

Throughout the trial, pending two years, Walsh declared his innocence. He said he stopped in the blind pig to get some information, was invited to have a drink, and then made a bet regarding his ability to lift a large chunk of ice, which, he says, he was doing behind the bar when the place was raided.

When he saw the dry agents Walsh ran and jumped from a second-story window, saying he did this in order to avoid complications with his former colleagues. Walsh quit the prohibition force in 1926.

To the four men and eight women on the jury Judge Simons said: "Any jury that would bring in a verdict of not guilty in such circumstances ought not to be trusted with the interests of the government nor with the interests of the defendant."

Another young lawyer said to me "Oh, we think nothing of them asking to be put on the jury here, that's been done for the last forty years. Why I've seen them any number of times walk up and give their card to the man and ask him to put it in the jury box—or they send their friends in with their card."

Even then I did not believe they could get a conviction if I had a Judge; for the case would never go to the jury.

But when upon my arraignment I made my motion to quash, on account of the disqualification of a juror, and was turned down with the statement "That I should not escape on any such technicality," when my bail was fixed by that Judge at $10,000 after I had voluntarily appeared, when the hearing of my motion for a bill of particulars, returnable July 2nd, was held up until this particular Judge could return and fix a day, and no day was ever fixed; when the motion for the plea in abatement was heard before the same Judge, and affidavits were presented establishing that my constitutional rights had been violated, before this grand jury, when affidavits were presented by me, and contradictory affidavits were presented by the government from the self same jurors, thereby apprising that Judge of the want of moral stability and vacillation of these jurors, and thereby showing they were unfit to serve, I felt I was up against a condition of affairs, which looked promising for a conviction.

I am innocent, and my God knows it! Do what they will, he will defend me! Bring a thousand of their paid or hired or influenced stool pigeons to portray themselves as fools, to swear to that manufactured statement, that I promised them what no one could promise. Yea, villians because the most of them had been in court, and knew what courts were for.

Villians, because they all knew this property had been in the possession of Trinity for over two hundred years, and knew that no man could promise a recovery of it. A manufactured scheme, because they had to tack on a fraudulent promise, and had to find the money hungry to lend themselves to cover that scheme with their evidence.

Read the following pages and you will see how the government obtained the indictment, and how it obtained the conviction.

One thing I have never been able to understand the vast amount of hatred engendered by my work in this matter.

In my indictment the prosecutor fairly spurted hatred and spleen from beginning to end. Take the hatred of some of the grand jurors. People who had never seen me. Take the hatred of the United States District Attorney. I should be to him just another person to be tried, but am I?

His examination was conducted in anything but a calm, and impartial manner. His statement of "It was money, money, money, all the time" is unfounded, and not proven.

Take the hatred of the Judge, who would lean over that bench and grin at me, calling these dear people, the members of this organization, dupes and villians. Why?

They all loll that choice bit, my disbarment around on their tongue—aye, and if it were possible to print that testimony, it would be easily seen it in no way supports the decision, just as in this matter, the testimony in no way supports that conviction.

When Ida Tarbell exposed the Standard Oil, she encountered no prosecution, still she was up against a most powerful organization. When Upton Sinclair exposed the Chicago Stockyards, he was not indicted for daring to call a spade a spade. What is it about this matter that calls for such persecution, such ferocity, such menace? It is for all the world as one man glibly put it "Like the Spanish Inquisition."

The conditions surrounding this matter have simply amazed me! For no reason whatsoever a secretary to one

of the Judges in Detroit made some of the most slanderous, untrue statements ever made against a human being, to the trial jury, as the affidavits following show. She did not know me, and if she had been told such things her legal connections should have told her that she is not absolved, simply because she is repeating what someone else has said. Who?

I have been accused of attacking the members of the Grand Jury. How could I? Only two of them have ever seen me. From those two I obtained knowledge of the true conditions of that jury room.

True, the organization investigated the Grand Jury, and I find in the decisions that quite a few men have been guilty of that crime; investigating the Grand Jury which returned an indictment against them and the courts have upheld such investigation. I found some sad conditions surrounding that Grand Jury. If all were well with that Grand Jury why object to an investigation?

I was accused of attacking the United States District Attorney. That I absolutely did not do, but I did expose the methods used by the Assistant United States District Attorney to secure that indictment. Has a government official, sworn to uphold the honor and dignity of the government, a right to disregard the constitutional guarantees of a citizen, in order to get an indictment? If that citizen knows that has been done, has he no right to attack or expose that man who committed that outrage against him?

I have been accused of attacking the Judge who sentenced me. That I certainly have not done. I have never attacked him in any other manner, than in my own heart and mind, and it is a good thing a man cannot be hung for what he thinks. At least I have an attorney who is not afraid to call that trial what it truthfully was.

I have been accused of attacking the trial jury. I never did anything of the kind. What I said was logical reasoning. Anyone is allowed that latitude. I noticed a change in the jury, after one of the members of the jury was taken sick, and was placed in a hospital in Detroit. I said I saw the change, but I do not believe I said that in the presence of Mr. Watkins or where he could have heard it.

The change in the jury was so palpable, that some of the members of the organization noticed it, which caused them to make an investigation. That investigation disclosed the activities of the secretary of another Federal Judge; that certain statements made by her were considered and given as the reasons for conviction, which were not before the court or testified upon the trial.

Who gave the young lady these facts to carry to the jury?

They were the most slanderous, obscene, despicable, false statements could be made of any man. Absolutely false, and could have been so proven upon the scantest investigation.

A pertinent question would seem to be, where did that lady get this beastly stuff upon which to base the charges she made, and pass them on to the jury for a conviction?

The jury mingled continuously, when outside of the court room, with the crowds in the corridor.

One of the witnesses before the Grand Jury was a bogus Dr. He was not used upon the trial for the purpose of going on the stand to testify, but he was much in evidence in the corridor, around and about the jury, and as reported to me was talking in a loud voice calling the defendants crooks, and other like endearing epithets, and all in the presence of the court attendant.

Is anyone going to make the claim, with the feeling running as high as it was, that none of these actions had any weight with the jury?

I would like to relate a little incident:

The jury room is on a court; that is, the door leads on to the same hall as the courtroom, but the window to that room opens on to a court. One window of the hall is directly opposite that jury room window.

When the jury left the courtroom it was understood they would be taken to dinner.

They went to dinner, and returned in groups, hence the door of the jury room stood open. Some of the jury were seen inside. One of the defendants was walking up and down, and passed within range of the door, no where near it. One of the jurymen sitting just inside of the door

Plate Forty-five

City Hall of New Amsterdam, in which the Schout, Burgomasters and Schepens held their sessions. Built in the year 1642. Taken down in the year 1700.

looked at her and threw back his head and laughed, and then sneered. Was this not a most unusual thing?

When the jury was inside, and the door was shut, certain people went around the hall to the window opposite the jury room. The scene inside as depicted—one lady was standing combing her hair, while a man was walking around telling a high joke from the facial expression, at the end of his recitation the whole jury broke into gales of laughter.

Do you think this jury was considering this evidence and deliberating? Or were they mere machines going through a formality?*

May I relate another incident recently reported to me:

One of the jurors, whether from the idea that he is irresistible, or with a preconceived scheme or plan to compromise some of the lady members of the organization at the close of the first day of the trial, approached a very dear friend of both the defendants, whom he had no doubt seen approach them as they came into the court room in the morning, and greet the lady defendant affectionately. When the court adjourned, the lady was leaving the court room when a voice at her elbow said "A very unfortunate thing, a sad thing this trial" or that in substance. She answered "It is indeed," and passed on out. When she got to the elevator, the same person stood at her elbow all the way down in the elevator, but did not speak, until she came outside of the revolving door, when he was standing there, and she then recognized him as one of the jurors.

"Why," she said, "you are one of the jurors, you should not be talking to me." He answered in substance that he'd be sure no one would catch him at it. He walked along with her, and asked her if she had a car, and she said, "No, that she was going to the street car." He said he would walk to the corner with her. He continued to talk of the case, and asked her if she was a member of the organization, and she said she was not, that she was just a friend of both the defendants. The lady told him she was married. After some talk the street car came along, and he assisted her on to the car, and left.

The significant part of this incident is, that he never spoke to the lady again, despite the fact that she was in the court room every day of the trial. Was her usefulness gone when he found she was not a member?

He spoke to another member, and still another, and he was many times seen walking up and down the sidewalk in front of the hotel where the interested organization had headquarters during the trial.

This is the same juryman whom I have recently been informed is the one being used as a basis for charges of jury tampering.

Was this man being used by the prosecution to oggle these ladies and try to compromise them? Was this juror filling a dual position for the government? Was he qualified to sit on any jury. It is reported this man made the statement he had served on the jury several times.

I want my government, your government to investigate this whole affair from beginning to end, and to prove to the world that we have a government for the rich and the poor alike; that a poor man in America cannot be "railroaded" to Leavenworth on manufactured charges as those appearing in this indictment.

VIEW OF BROADWAY 1834.

Plate Forty-six

PLEDGE

_____ SOCIETY No.

TO—W. T. GRIDLEY, P. O. BOX 71, TIMES SQUARE STATION, NEW YORK CITY

SIR: This is to advise that I have enrolled as a member of the

_____ Society No.....

of the Advocates of Justice for the Descendants of Anneke Jans Bogardus, and have paid my membership fee for the book fund of $25.00 to be forwarded to you, at the same time signing, on separate form, an advance subscription for a copy of the book to be published by you, giving the results of your five years' connection with the Bogardus matter, by reason of which connection, you were disbarred.

I understand the arrangement between you and the societies is that you are to retain fifteen per cent of the proceeds of the sale of the said book, and that eighty-five per cent, less the expenses of the publication, is to go into a fund to be turned over to a National Organization to be formed following the publication of said book; the first publication by the descendants giving their side of the controversy.

I further understand that the burden of financing the publication of this book, rests upon the shoulders of the descendants of A. J. B., and that the present movement to organize all sections of the country where there are descendants, is likewise the duty of the members of the different societies in the organization. To that end, therefore, I pledge my active co-operation and financial support to my society to effect a speedy organization of A. J. B. descendants.

Please send me promptly, upon receipt, acknowledgment of my membership fee for the book fund.

Dated_____192

Name_____

Street_____

City_____ State_____

NONE BUT NEW MEMBERS MUST SIGN PLEDGE. Membership fees for book fund will be held here until signed pledge received. Pending the publication of the book, forget suit, settlements, case and the like, and do not allow anyone to inject either or any of these words into any discussion of the work of this organization, understanding at all times that the plan of this organization is the publication of a book, and refuse to discuss what you may do with the book after it is published.

CHAPTER SIX

Indictment

As a preliminary to an indictment, there must be a Grand Jury inquiry.

The institution of the Grand Jury is of very ancient origin in the history of England, and was an important barrier against persecution by the King. It was at the time of the settlement of this country, an informing and accusing tribunal only.

So far from being assimilated in any manner to the star chamber, an ancient court of criminal jurisdiction, which was an instrument of oppression in the hands of the Tudor kings, and which was abolished during the period of the Stuarts, the object and purpose and effect of the Grand Jury are directly opposed to star chamber methods. There is only one element of similarity, between the two, and that is secrecy.

Undoubtedly these conditions were recognized in the formation of our American constitution; for we find in the fifth amendment of our constitution, this proviso:

Art. V.—No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Under this provision of our constitution, laws have been enacted, providing for the empaneling of Grand Juries, and their qualifications, as follows:

Section 411. (Judicial Code, section 275.) Jurors; qualifications and exemptions.—Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned.

Vol. III, Page 43, Compiled Laws 1915. (12190) Section 121. The said officers shall proceed to select **from the persons assessed on the assessment roll of the township or ward for the same year,** suitable persons being citizens having the qualifications of electors to serve as jurors; and in making such selection they shall take the names of such only as are not exempt from serving on juries, and are in possession of their natural faculties, and not infirm or decrepit, of good character, of approved integrity, of sound judgment well informed and conversant with the English language and free from legal exceptions, and who have not made, and in whose behalf there has not been made to the officers mentioned in the preceding section any application to be selected and returned as jurors.

Who picks the jurors:

412. (Judicial Code, section 276, amended.) Same; manner of drawing.—All such jurors, grand and petit, including thos summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein.

Thus provision is made for the qualifications of jurors, and for the commissioners to pick those called for service.

We have here the delegation of the authority of picking jurors in the hands of two commissioners, who must be politicians, connected with the major parties.

Compare this system with the old tried and true method of placing all names of qualified jurors, in a county or district, after the first of each year, in a jury box, and from which, as the court may order, a hand was inserted to draw from that vast collection of names, the required number.

That hand that was to draw those names had no picking or choosing, and could do no favors, and it could matter not the class of litigation that might come before those jurors.

Between the two systems, which prevents favoritism? Which prevents the selection of hand-picked jurymen? Friends, and those who ride the government for a winter meal ticket? Tell me how, upon this particular Grand Jury, one Pearl Prentice, the sister-in-law of the Pontiac Postmaster, who resided with him, a place where the organization repeatedly reported mail troubles, was called, she had not been qualified to sit for ten years.

But how about the others? Read these key affidavits, on which the names have been omitted; for to publish names might obstruct what is required, a full investigation of these methods about our temples of justice:

KEY

A Signifies one investigator.
A1 Signifies another investigator.
A2 Signifies another investigator.
B Signifies a member of the grand jury.
C Signifies any address or place mentioned.
D Signifies person asked to secure appointment to grand jury.
E Signifies district attorney or representative when named.
F Signifies postal inspector when named.
G Signifies notary public.
H Signifies Commissioner of jurors.
I Signifies miscellaneous names referred to.

STATE OF MICHIGAN }
COUNTY OF WASHTENAW } ss.

(A) being first duly sworn according to law, deposes and says:

That he is married, thirty-eight years of age, and resides at (C), in the city of (C), in the County and State aforesaid.

That on March 26th, 1928, at one o'clock P. M. he called on one (B) at (C), in the City of Detroit, County of Wayne and State of Michigan.

That immediately prior to calling at the home of (B), (C), Detroit, Michigan, I called at a saloon in the same block on C, where I purchased a package of chewing gum and thereafter engaged in some conversation with the proprietor, and during the conversation a man came in to whom I was introduced—the man being introduced to me under the name of (I). I had previously inquired of the proprietor of the saloon regarding the price of real-estate in the vicinity of the saloon, and upon introduction to the man named (I), the proprietor of the saloon informed me in the presence of (I), that (I) had real-estate holding in the neighborhood and would extend the information to me.

The man named (I) and myself immediately left the saloon and went to his residence at (C), where he showed me his property at that address, and likewise (C), (C), (C).

(I) told me the property aforesaid was owned by his brother and himself, and he pointed out another piece of property across the street and in the adjoining block that him and his buddy had got from a church a week ago.

(I) told me that the property last mentioned had been willed to a church and that "he (I) and his buddy had gotten it away from the church.

He further stated that the proprietor of a near-by bootlegging joint had recently got knocked off by being shot through a window, and (I) showed me the window glass through which the bullet had passed, and he told me that a certain fellow was held for some time and was released because the authorities could not get anything on him, but he told me that the man who was held knew something about it.

(I) told me to phone him tomorrow, at which time I asked him for his name, and he replied, "(B)" phone number....., and this was my first knowledge that I was (B).

After explanation as to the proprietor of the boot-legging joint being shot, (B) told me to be careful of bad whiskey in that neighborhood, but if you get it at the saloon where we were it is usually bonded goods from Canada, but you will have to get pretty well acquainted with him before he will sell it to you. (B) also told me that numerous sporting women resided in the neighborhood and that he would take me around to see the sights if I would phone him tomorrow.

During the time I was with (B) he did not remove his hat, but his hair is gray, he weighs approximately two hundred pounds or more, what I would call a "fat man"; he is smooth shaven, slightly red cheeks, and walks with a slight limp.

After I left (B) and was waiting on the corner for a street car, and man, whose name I did not learn, walked out of a little candy store, and taking me by the arm, said to me, "Do you know that buddy you was with". I replied, "No," I'm looking for real-estate". The man informed me that (B), who he had seen me with, "was a tough customer". I said "is that so — why"? The man said, "why he is a damn bootlegger" and at that the man jumped on a street car going in the opposite direction to that which I was going to go.

At about 12:20 P. M. on March 27, 1928, I called at the residence of I, (C), (C), (C), (C). I rang the door bell and no one responded. I called next door and was told by the lady who answered the door that (I) never went out due to an attack of bronchitis. At that I went back to the residence of (I) at (C) and upon ringing the doorbell a man came to the door, answering in description that given me by the lady next door — as one suffering from bronchitis. He frequently coughed and cleared his throat with considerable difficulty during my conversation with him. When he came to the door I asked him where (I) lived. He asked me in the house and I went in. He says, "we'll look in the telephone directory" which he did, and which he failed to find listed in the directory. I inquired regarding real-estate for sale in the neighborhood, and asked him if the property where he resided was for sale. He replied, "No, it is not for sale". I asked him if he was the owner and he replied, "Yes, I own it but it is not for sale".

The description of (I) is, viz:—Very small, weighing approximately 130 to 140 pounds, gray hair, smooth shaven except very small mustache, about 60 to 65 years of age, wears tortoise shell rimmed glasses.

On April 10th, 1928, at 4:30 P. M. I called at the home of (I), (C), City of (C), County of (C), and State of Michigan. (I) answered the door when I called at the place aforesaid. During the conversation I told her I had come to see her relative to getting on the Grand Jury—that I had heard and that she herself had told be of her sitting on the Grand Jury from November 4th, 1927 A. D., to March 4th, 1928 A. D. (I) told me that she did not know how she was selected for the Grand Jury, and told me that she thought she had been selected for the Grand Jury perhaps through (I) because of the fact that (I) knew she was desirous of doing Grand Jury service and she further stated that "it looks funny to me how the people over around (C), Michigan are getting on the Grand Jury all the time". I asked (I) if she could tell me how I could get on the Grand Jury, and she replied, "I cannot tell you how to get on the Grand Jury, but if you will go to (I), who lives on (C), (C), Michigan, I think she can tell you how to get on the Grand Jury, for I heard that (I) got on through a letter to that effect. (I) further told me that (I) had sit on the Grand Jury during the same period with her. (I) further stated that (B) of (C), Michigan, had sit on the Grand Jury during the same period with her.

On April 13th, 1928, at about 8 P. M. I met (I) on the corner of (C) and (C), City of (C), County of (C) and State of Michigan. After shaking hands with we engaged in conversation for about one hour and fifteen minutes. Just prior to meeting me, (I) came out of a soft drink establishment located on the corner of (C) and (C) or (C). During the conversation between (I) and myself, I remarked that my foot was paining me due to falling arches, at which time I also remarked "your brother (B) has a sore foot too — is that a falling arch?" (I) replied, "No, he fell off a chair five years ago and broke a bone in his foot, but it is getting lots better now and he can get around a little better". I remarked to (I) "if your brother (B) could get a job as a street car motorman it would be an easy job for him due to it being possible for him to sit down most of the time on such a job". (I) said in reply, "He wouldn't do anything like that — he had a sitting-down job while he was on the Grand Jury".

I said, "Oh, (B) was on the Grand Jury, was he?" (I) said, "Yes". I asked him what a person sitting on the Grand Jury had to do. He said, "Oh, they don't have to do much of anything but listen". I remarked that it must be quite interesting to hear the different cases coming before the Grand Jury. He said "Yes, it is quite an experience". I asked him "what kind of cases do they try before the Grand Jury"? He said, "Oh, dope cases, boot-leg cases and there was another kind of a case that come up before the Grand

Jury that (B) sit on, that was especially interesting". He stated further in explanation of the case that had been especially interesting to his brother while his brother (B) was sitting on the Grand Jury, viz:—" The case concerned a man who had been disbarred from the practice of law in New York City, and who had collected a big bunch of money from people who was supposed to be the heirs to some land in New York City and the disbarred attorney was supposed to be attempting to recover the estate for the heirs — This disbarred attorney was indicted and if I remember right about it, he was tried before a Judge and got two years for it — and even after he was indicted the darn fool heirs kept on sending him money, and he keeps on telling them that he will get that estate for them — that case had something to do with a church and this fellow who was indicted had sent books through the mails and was charged with fraudulent use of the mails".

At this point I remarked that the case mentioned by (I) must have been quite interesting, whereupon I asked him how a person could get on the Grand Jury. He replied, "you have to have a pull or know some one who will put your name in for you and get you on". — He stated further, "my cousin married (I) of (C), Michigan, and he put my brother's (B) name in and got him on" —— "a funny thing about it was — when the Deputy came to serve the Jury service subpoena on my brother, we already knew it was coming" "we knew the deputy a good many years ago when he was a bartender" — "maybe you could get a deputy to slip your name in so you could get on the Jury".

(I) said to me after I had asked him how many times his brother had sit on the jury, "You know there are several professional jurors around—(B) has just sit on the jury once—he just started".

(I) asked me if I knew (I) of (C) Michigan and I told that that I did. He told me, "if you will se (I) maybe he can fix you up". At this point I arranged to see (I) again, and he told me that if he was not at home when I called that I could see his brother.

On April 15th, 1928, at about 3 P. M. I called on (I) at his office on (C) Street, in the Town of (C), County of (C) and State of Michigan. I asked him if he could fix it for me so I could have an interview with (B). He said, "Yes, I will give you a letter of introduction to her and she will talk to you". (I) inquiry relative to the nature of my business in calling on or interviewing (B) and I told him, "I wanted to see her relative to getting a job on the Grand Jury". He replied, "Why don't you see (I)." I asked him why I should see (I) about it and he told me, "Why, he was in the office here with a slip of paper bearing a list of names and he showed me the list and wanted to know if I knew the people whose names appeared on the list". (I) told me that he told (I), "Yes, I know some of them" and (I) further added that (I) asked him (the I) "do you know if those you know on the list have money or are they poor people", after (I) had examined the names on the list submitted to him by (I), (I) told me that he told (I) that he (I) would not vouch for the financial standing of any person on the list whom he knew, and (I) told me that he asked (I) what the list of names were for. (I) told me that (I) told him in answer to his question concerning the list of names, "They are the ones that are to be the next Grand Jury — there is a case of (I) coming up and I want to look them up and see that they are alright before going on the jury.

At this point (I) gave me a letter of introduction to one (B) (C), Michigan. I took the letter and went directly to (B) residence. I rang the door-bell and the door was answered by (B). I presented her with the letter (I) had given me and invited me in the house. She read the letter at once, and said to me, "(A) what can I do for you"? I told her that I came to see her relative to getting a job on the Grand Jury as I had heard that she had sit on the Grand Jury quite recently. She told me, "(A), I could not tell you how to get on for I don't know how I got on myself". I asked her "do you know of any one who could tell me how to get on the Grand Jury." She told me, "No, without it would be (B), (C), which is either in Detroit or just outside of Detroit towards Monroe, who sit on the Grand Jury at the same time I did, and who told me at that time that she had sit on the Grand Jury and Traverse Jury several times, and I don't think she owns any property for she lives in an apartment and pays rent". (B) further told me, "if you can find Miss (B), maybe she can help you, for she looked like a woman to me that "could be bribed". (B) told me that, "(B) who lives at (C), Detroit, Michigan, in my opinion owns no property"—(B) in referring to (B) consulted a list she had in a drawer in her writing desk and she told me the names on that list was the names of the Grand Jurors who sit at the same time she sit on the Grand Jury. (B) did not show me the list of names and said she much preferred to refer to them herself, as she did not know if she should show them to anyone. (B) also said, "Oh, yes, they also had a fat man who walked lame — I believe his name was (B) and he sit on the Grand Jury at the same time I did — I certainly did detest that man — when there was any questions being asked the witnesses he (B) would butt in and it made the attorney very much out of patience with him — and there was another one by the name of (B) who would do the same thing" — I said, "Well (B), do you believe or think that any of these men or women are professional jurors"? (B) replied, "Well (A), I couldn't say — and even if I knew I wouldn't want to say, for I wouldn't want to get mixed into anything, but I can think all I please about it and no one can hurt me for that". (B)

On April 16th, 1928 at about 10:30 A. M. and in company with one (A2), I called at the home of one (B), who resides at (C), in the City of Detroit, County of Wayne, and State of Michigan. (B) came to the door. I told him I had brought the man whom I represented, to look at certain property owned by (B). During the conversation and the inspection of the property, I remarked, "Your brother (I) told me about so many of your friends and relatives whom I know, that I feel like one of the bunch around here".

I added "Your brother remarked that (D) in (C) had married your cousin, and that I had known (D) for a good many years". At this point I further told (B), "Your brother (I) told me that (D) got you on the Grand Jury — I have always been interested in anything of that kind and would like to get on myself". (B) replied, "Well, (D) can get you on alright, for he got me on the Grand Jury". I left (B) soon afterward with the understanding I was to see him the next day.

On April 17th, 1928 at 2 P. M. I called on (I) at his office in the (C). Upon entering his office I said, "Well (I), I came back to ask you another question or two". (I) said, "Alright (A), fire away". I said, "(I), can you tell me the date (D) showed you that list of names, he had in your office, which he said would be the next Jurors". (I) replied, "No (A), I can't tell you the exact date but it was early in the spring of 19 — if you want the correct date I can look it up sometime". I said, "Well (I), if you looked at the list can you remember any of the names that was on it"? (I) said, "Yes, let's see, — I know one of them for sure that was on the list — but I can't recall anyone else

at present." (I) told me in connection with the name of (I), which appeared on the list of Jurors shown to him by (D), that he (D) believed (I) was on the Jury referred to by (D).

(I) told me further, "That's about all I can tell you at the present time but some one might see (I), (C), (C), Michigan and you might get some pretty hot stuff from him". (I) told me, "Now in regards to (I) — he was in a crooked deal so I have heard in ———, over some land sites he had bought up, knowing (I) was going to locate in that particular section and when it was found out by (I) that (I) was grafting, he (I) got angry and stirred up a lot of trouble but it was hushed up quick. I will say one more thing — (I), (I), and (I) are very close together — If you will have some one see (I) they will get some good information, but don't you go as they know you — now I will try to think of some more of those names, if you will call some other time".

On April 18th, 1928 at 1:40 P. M. I called on (I) who manages the (C) in the (C), in the City of (C), County of (C) and State of Michigan. (I) told me upon inquiry that he had lived in (C) and (C) Michigan practically all of his life time. I asked (I) if he knew (I), (I) replied, "I say so — for a good many years" I said, "Just what do you know about him in a general way"? (I) replied, "Well, I know that he is some kind of a (I) in C". I said, "No, that isn't what I mean — did you ever know of him doing anything crooked". (I) replied, "When he was the (I) of (C) County they used to pick up bums in (C) and take them before the Justice of the Peace and he would sentence them to ten days in the County Jail in (C) — (I) being (I) would keep them a couple of days and put their names on file, then release them and tell them to go back to (C) and get picked up again and for them to give another name on re-arrest. There was times the same man would be in the County jail serving ten days under three or four different names". I said, "What was his idea in doing anything like that"? (I) told me, "Well, you see the (I) was allowed so much for each meal at that time — he did that to run the meals up on the County, so it would make more money for him — that is about the only thing I know as I never paid much attention to him". After thanking (I) for the information I left the (C). The information given me by (I) was given to me in the presence of (A).

I have read the foregoing affidavit and the same is true, and further deponent sayeth not.

(A)

.....

Subscribed and sworn to before me this 19th day of April, 1928.

(G)

.....

Notary Public, Detroit, Michigan.

My commission expires May 2, 1931.

KEY

A Signifies one investigator.
A1 Signifies another investigator.
A2 Signifies another investigator.
B Signifies a member of the grand jury.
C Signifies any address or place mentioned.
D Signifies person asked to secure appointment to grand jury.
E Signifies district attorney or representative when named.
F Signifies postal inspector when named.
G Signifies notary public.
H Signifies commissioner of jurors.
I Signifies miscellaneous names referred to.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

(A), being first duly sworn deposes and says:

That on the 23rd day of April, 1928, at about ten fifteen o'clock A. M. he went to the house at (C), in the City of Detroit, accompanied by (A1). and (A2), both residents of (C), Michigan.

That your deponent interviewed one (B) at the above address; your deponent asked the said (B) if those people that lay between him and the next resident were ready to sell the property, and the said (B) answered your deponent that he had not seen the said people that it had slipped his mind. Deponent said that he had brought the gentlemen with him to look the property over and asked him to slip on his coat and come out to see the property so that they could hear what he said in regard to the property as well as myself. At that point the said (B) put his overcoat on and came out of the house with your deponent and the two persons named.

When the said (B) came out of the house your deponent introduced him to the two gentlemen with him.

At this point we went out into the alley and looked over the rear end of (B) property, and he explained that it was one hundred foot long and hundred foot deep. The four of us then walked from there back to the front of (B) residence.

Deponent then remarked "Well I got into a jam at one time over some commission on a real estate deal, and they took it to court, and we had a trial before the jury, and I came pretty near losing my commission — (B) knows how that is, as he has sat on the jury." (B) answered "Yes, I have sat on every jury in the City of Detroit." Deponent said "Yes, you must have a lot of fun with that and it is quite educational." He answered "Yes, you all have a lot of fun on the Grand Jury, as they try so many different kinds of cases." Deponent asked him "How many do they have to have on the Grand Jury?" The said (B) said "Twenty-three, but they don't all have to be there." He added "They can act with sixteen, that sixteen is a quorum." "That they draw thirty-one and leave eight out." Deponent asked him that if they indicted anyone how many would have to vote on that, and he answered "Twelve."

Deponent said that he would like to get in the Grand Jury room some time and hear these cases. (B) answered that you could not get in there to hear them; that there was no one allowed in there but the Grand Jury, District Attorney and the witness that they are questioning. Deponent asked "Don't they allow anyone there at any time" and the said (B) answered "No."

Deponent then asked him what kind of cases they tried, and said that he was interested in those things and would like to get on the jury some time just for the experience. (B) answered "Whiskey cases and narcotic cases and different things."

Deponent then said "Well your brother was telling me something about a case in regard to a Church — I think it was Trinity Church." (B) said "Oh, yes." "That was that Bogardus case." Deponent said I don't believe I ever

heard of that case, and (A1) spoke up and said "That he had read about it in the newspaper." (B) then said that there had been a lot in the newspapers, and that they would see a lot more in the newspapers in a few days, as they indicted two parties in regard to the Bogardus matter for defrauding through the mails, and that they had also accused two of the witnesses of perjury; in fact that they had taken one of them and locked her up for a while, and made her change her mind. The District Attorney had threatened these two witnesses with perjury. Deponent said "The District Attorney does he try to get these women tangled up so that they get excited and don't know what they are talking about, is that the idea." (B) said "Well this District Attorney has never lost a case." He said "I met one of these women in the hall when I was coming back from lunch the day they witnessed." Deponent asked him just what this Trinity Church corporation trying to do anyhow? (B) said that this man Gridley was just roping in the people; that he had taken some two hundred thousand dollars, making them think that he was going to get them a lot of money back; that it beat all because some of them seemed to be such smart people, and such good orators, he didn't see why they were fools enough to bite; that they gave a banquet at the Masonic Temple costing $8. a plate, and gave the District Attorney a special invitation to attend; that the District Attorney showed him the invitation; that the District Attorney told the said (B) that he did not go to banquet; he showed the invitation to the jurors. (B) said that he read the invitation the District Attorney had received to the banquet. (B) further said that the Postal Inspector from New York City was there as a witness, and he said that there was a large room full of mail in the post office in New York for this man Gridley; that he did not dare come and get the mail; that they had been waiting for him to come and get it.

(B) said that Gridley had never signed his own name to any of his letters, only by the letter G. but that the secretary Mrs. Wright signed for Gridley. He said that Mrs. Wright had signed for some drafts in order to get them, and that was the way they got the goods on Gridley in New York. He said that the said Gridley was due for Leavenworth as soon as they found him; that Gridley was going to have a book printed with 480 pages which was to have the last word in it. Deponent asked him what the last word was and the said (B) answered that that was what they all wanted to know. (B) said that some of the witnesses had testified that that book of 480 pages was not large enough that they had to print one with 1600 pages in it; that the said book was to sell for $25. and each member had to take three; either sell two and keep one; or take the three themselves, they had to dispose of three.

(B) further said that the witnesses had testified that this man Gridley was a disbarred attorney.

Deponent asked the said (B) how the vote on the indictment was taken, and the said (B) would not say that but said that it was practically unanimous, and that it was for the use of the mails to defraud.

(B) mentioned that a (B) in (C) sat on the Jury and a lady from (C) by the name of (B). He said that there was a lady belonged to this organization that lived in (C).

Deponent is quite positive that the said (B) stated that the District Attorney had scared one of the women so badly; that he had taken her downstairs for perjury and locked her up, in order to get her to change her tune.

Deponent said that the said (B) said the lady witness referred to always answered the District Attorney in this manner "Positively."

(B) said there were two women accused of perjury but that he had only locked up one of them and had scared her badly.

Deponent said that as long as the indictment had been rendered he would like to hear the case and when was it coming up — said (B) said it would be in the newspaper in double faced type, right across the headlines, but that there was some trouble in regard to the case, because they found a woman by the name of (B) who lives in (C) who did not own any property, but he said that that did not make any difference because you have not had to own property to sit on the Grand Jury for at least forty years. Deponent asked the said (B) if the District Attorney had cross questioned the witnesses, and he said "No, the District Attorney is not allowed to do that, but anyone of the jurors can question the witness and put it in cross question form if they like."

Deponent further says that he asked the said (B) if they had a judge when they were hearing these cases before the Grand Jury, and the said (B) said no, that they appointed a foreman of their own. Deponent said that he would like to get on the Grand Jury once in order to get this experience and of course a fellow don't know how to do this, but you have been on all the Juries in the City of Detroit. Of course you knew that you were going to get on before you were called to this Grand Jury didn't you, and the said (B) answered "Oh yes, I knew that it was coming before I got it." (B) said that a friend of his had told him he was going to get on the Grand Jury, at that time. (B) said that he had a friend in the Post Office who had put his name in a couple of years ago, and that this fellow in the Post Office thought that he was the one who had got him on the Grand Jury but that he, (B), knew that he was not, for he knew who had got him on the Grand Jury.

Deponent asked the said (B), how does it come that they got the goods on these people in New York that they tried the case in Detroit. (B) said he did not know, but it appeared as though they had to try it in Detroit for some reason.

(B) told us that thirty one people had been summoned for Grand Jury duty, but it had finally simmered down to twenty-five that they were told they could not have twenty-five and two of them had to be dismissed, and finally two women got up and were excused. He said that there were two men that expected to be gone part of the term of the Grand Jury but they would not get off, because they wanted the $4.00 a day, and he said that it was a fact that they never had a full jury all the time. He said that the two men referred to were money men and did not need the money they got from the Grand Jury.

Deponent asked the said (B) how long this Church case took, and he said it went along for several days.

Further deponent sayeth not.

(A).

Subscribed and sworn to before me this 23rd day of April, 1928.

(G)
Notary Public, Detroit, Wayne County.
My Commission expires May 2, 1931.

KEY

A Signifies one investigator.
A1 Signifies another investigator.
A2 Signifies another investigator.
B Signifies a member of the grand jury.
C Signifies any address or place mentioned.

D Signifies person asked to secure appointment to grand jury.
E Signifies district attorney or representative when named.
F Signifies postal inspector when named.
G Signifies Notary Public.
H Signifies Commissioner of jurors.
L Signifies miscellaneous names referred to.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

(A1), being first duly sworn deposes and says:

That he accompanied (A) and (A2) to the residence of one (B) at (C), City of Detroit, on the 23rd day of April, 1928, at about 10:15 A. M. on said day.

That he was present when the said (A) questioned the said (B) in regard to the property which lay between his house and the next one to it. Deponent was introduced to the said (B) when he came out of the house to look over the said property with deponent and his party.

That the said (A) told the said (B) that he had got into a jam once about some real estate commission and that they had to have a trial about it before a jury; that (B) knew what that was because he had served on juries. Deponent says that the said (B) answered that he had served on every jury in the City of Detroit. (A) said to the said (B) that he must have lots of fun and it must be quite educational, and the said (B) said yes, that they had a lot of fun on the grand jury, as they tried so many different kind of cases. (A) asked the said (B) how many people they had on the grand jury at a time, and the said (B) told him 23 but that they did not have to be there all the time. He said that the grand jury could act with only sixteen; that sixteen was quorum. (A) asked the said (B) how many jurors they would have to have to indict a person, and he answered "twelve."

(A) told the said (B) that he would like to get into a grand jury room and hear what they had to say, but (B) told him that they did not allow anyone in there, but the District Attorney and the jury.

(A) asked him what kind of cases they tried, and (B) said whiskey cases, narcotic cases and different things. (A) then told the said (B) that his, (B's) brother, had been telling him something about a case in regard to a church. That it was Trinity Church he believed. The said (B) then said it was the Bogardus case. (A) said that he had not heard of that matter, and deponent said he had read about it in the newspapers. (B) said that there would be a lot more in a few days. He said that they had indicted two people in that Bogardus matter for defrauding through the mails. He said that there were also two witnesses women who had come before the grand jury in regard to this Bogardus matter; that the District Attorney had scared one of them so badly accusing her of perjury and had taken her down and locked her up for a while in order to get her to change her tune. (A) asked him if that was what the District Attorney was up to getting people all tangled up and so excited that they didn't know what they were talking about. (B) said "Well this District Attorney has never lost a case. (A) asked (B) what this church was trying to do? (B) said it was this man Gridley who was just roping people in; that he had taken some two hundred thousand dollars making them think that he was going to get them a lot of money back; he said that it beat all, because some of these people were good orators, and he didn't see why they were fools enough to bite; that they gave a banquet at the Masonic Temple costing $8 a plate, and gave the District Attorney a special invitation to attend. (B) said that the District Attorney showed the invitation to the grand jury; that he, (B), read the invitation, but that the District Attorney did not attend the banquet.

(B) told us that a New York Postal Inspector had been a witness before the grand jury; that he had told them that there was a large room full of mail down there in New York but that the said Gridley did not dare come there to get it, that Gridley never signed his own letters that the Secretary Mrs. Wright signed for Gridley; that the said Mrs. Wright signed for some drafts and that was the way they got the goods on Gridley. (B) said that Gridley was due for Leavenworth as soon as they found him; that they did not know where he was; that Gridley was going to print a book of 480 pages, which was to have the last word in it. (A) asked (B) what was the last word, and (B) said he didn't know that's what they all wanted to know. (B) said some of the witnesses testified that the 480 page book was not large enough and that now they had to print one of 1600 pages; that the book was to sell for $25, and each member had to take three; that they were to sell two and keep one, or keep the three.

(B) said that this man Gridley was a disbarred attorney.

(A) asked the said (B) how the vote on the indictment was taken, and (B) said that it was practically unanimous.

(B) told us that a (B) in (C) was on the jury with him, and a lady in (C) by the name of (B). He said that there was a lady belonging to this organization who lived in (C).

(B) told us that one of the lady witnesses had a peculiarity she answered the District Attorney in this manner, "Positively." (B) told us that the District Attorney had only taken one of the women witnesses and locked her up in order to get her to change her tune, because she had perjured herself.

(A) told (B) that he would like to hear this case, and asked (B) if he knew when it was coming up. (B) told him that he'd know for it would be in the newspaper in double faced type, right across the headlines. (B) said there had been some trouble in regard to the matter because one of the women who sat on the jury, a (B) who lived in (C), did not own property; but he said that it did not make any difference because you did not have to own property to sit on the grand jury, that for forty years you had not had to own property to sit on the grand jury.

(A) asked (B) if the District Attorney had cross questioned the witnesses, and he said that he had not, that he was not allowed to do that but that any juror could question a witness and put it in cross question form if they liked.

(A) asked (B) if they had a judge in the grand jury room, and (B) said no, that they chose their own foreman. (A) said that he'd like to get on the grand jury, that it was some experience, but that a fellow did not know how to go about it. He said to (B) "You'd know how to go about it because you've served on lots of juries and you knew you were going to be on this grand jury before you were called didn't you?" (B) told him "Yes, that he knew it was coming before he got it."

(B) told us that a friend of his told him he was going to be on the grand jury at that time.

(B) said that he had a friend in the post office who had put his name in for grand jury duty a couple of years ago, and that when he was called to the grand jury, this fellow thought it was he who had got him on the jury, but (B) said that he knew better, he knew who got him on the grand jury.

(A) asked (B) how it came that this matter was tried

in Detroit, when it happened in New York. (B) said that he did not know but it appeared as though it had to be tried in Detroit for some reason.

(B) said that thirty-one people had been summoned for the grand jury, but that it finally simmered down to twenty-five, and they were told that they couldn't have twenty-five, so two of them were dismissed. (B) said that there were two men who expected to be gone part of the term but that they wouldn't get off the jury, as they wanted the $4 a day. He said they never had a full jury all the time. He said that the two men referred to were money men and didn't need the money they got from the grand jury. (A) asked (B) how long this church case took, and he said it went along several days.

Further deponent sayeth not.

(A1).

Subscribed and sworn to before me this 23rd day of April, A. D. 1928.

(G).

Notary Public, Detroit, Wayne County.

My commission expires May 2, 1931.

KEY

A Signifies one investigator.
A1 Signifies another investigator.
A2 Signifies another investigator.
B Signifies a member of the grand jury.
C Signifies any address or place mentioned.
D Signifies person asked to secure appointment to grand jury.
E Signifies district attorney or representative when named.
F Signifies postal inspector when named.
G Signifies Notary Public.
H Signifies Commissioner of jurors.
L Signifies miscellaneous names referred to.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

(A2) being first duly sworn deposes and says:

That he accompanied one (A) on the 23rd day of April, 1928, to the residence of one (B), (C), and (A1) was also in the party.

That he was present when the said (A) questioned the said (B) in regard to the property which lay between his house and the next one to it. Deponent was introduced to the said (B) when he came out of the house to look over the said property with deponent and his party.

That the said (A) told the said (B) that he had got into a jam once about some real estate commission and that they had to have a trial about it before a jury; that the said (B) knew what that was because he had served on the jury. Deponent says that the said (B) answered that he had served on every jury in the City of Detroit. (A) said to the said (B) "You must have lots of fun and it must be quite educational," and the said (B) said yes, that they had a lot of fun on the grand jury, as they tried so many different kind of cases. (A) asked the said (B) how many people they had on the grand jury at a time, and the said (B) told us twenty-three, but that they did not have to be there all of the time. He said that the grand jury could act with only sixteen; that sixteen was a quorum. (A) asked the said (B) how many jurors they would have to have to indict a person, and he answered "twelve."

(A) told the said (B) that he would like to get into a grand jury room and hear what they had to say, but (B) told him that they didn't allow anyone in there but the District Attorney and the jury.

(A) asked him what kind of cases they tried, and (B) said whiskey cases, narcotic cases, and different things. (A) told (B) that his, (B) brother had been telling him something about a case in regard to a church; that it was Trinity Church he believed. The said (B) then said that it was the Bogardus case. (A) said that he had not heard of that matter, and (A1) spoke up and said that he had read about it in the newspapers. (B) said there had been a lot of it in the newspapers, and that there would be a lot more of it in a few days. He said that there were also two women witnesses who had come before the grand jury on which he was sitting in this Bogardus matter; that the District Attorney had scared one of them so badly accusing her of perjury, and had taken her down and locked her up for a while in order to get her to change her tune. (B) asked him if that was what the District Attorney tried to do to get people tangled up and get them so excited that they did not know what they were talking about. (B) told us that this District Attorney had never lost a case. (A) asked (B) what this church was trying to do any way. (B) said that it was this man Gridley who was just roping people; that he had taken some two hundred thousand dollars making them think that he was going to get them a lot of money back; he said that it beat all because some of these people were such good orators, and he didn't see why they were fools enough to bite; that they gave a banquet at the Masonic Temple costing $8 a plate, and gave the District Attorney a special invitation to attend; (B) said that the District Attorney showed the invitation to the grand jury; that he, (B), read the invitation, but that the District Attorney did not attend the banquet.

(B) told us that a New York Postal Inspector had been a witness before the grand jury; that he had told them there was a large room full of mail down there in New York but that the said Gridley had not come down there to get it, that he did not dare to come. He said that Gridley never signed his own letters that the secretary Mrs. Wright signed for Gridley. He said that how they got Gridley. Mrs. Wright signed for some drafts and that was the way they got the goods on Gridley. (B) said that Gridley was due for Leavenworth as soon as they found him; that they did not know where he was. That Gridley was going to print a book of 480 pages, which was to have the last word in it. (A) asked him what was the last word, and (B) said that he did not know; that that was all they wanted to know. (B) said some of the witnesses testified that the 480 page book was not large enough and that now they had to print one with 1600 pages; that the book was to sell for $25 and each member had to take three; that they sell two and keep one, or keep the three.

(B) said that this man Gridley was a disbarred attorney.

(A) asked the said (B) how the vote on the indictment was taken, and (B) said that it was practically unanimous.

(B) told us that a (B) in (C) was on the jury with him and a lady in (C) by the name of (B). He said that there was a lady belonging to this organization who lived in (C).

(B) told us that one of the lady witnesses had a peculiarity she answered the District Attorney in this manner "Positively." (B) told us that the District Attorney had only taken one of the women and locked her up.

(A) told (B) that he would like to hear this case, and asked (B) if he knew when it was coming up. (B) told him that he'd know for it would be in the newspaper in double faced type right across the headlines. (B) said

there had been some trouble in regard to the matter because one of the women who sat on the jury a (B) who lived in (C) did not own property; but he said that it didn't make any difference because you did not have to own property to sit on the grand jury, that for forty years you hadn't had to own property to sit on the Grand Jury.

(A) asked (B) if the District Attorney had cross questioned the witnesses, and he said that he had not that he was not allowed to do that but that any juror could question a witness and put it in cross question form if they liked.

(A) asked (B) if they had a judge in the grand Jury room, and (B) said no, that they chose their own foreman. (A) said that he'd like to get on the grand jury that it was some experience, but that a fellow didn't know how to go about it. He said to (B) "You'd know how to go about it because you've served on lots of juries and you knew you were going to be on this grand jury before you were called didn't you" and (B) told him yes, that he knew it was coming before he got it.

(B) told us that a friend of his told him he was going to be on the grand jury at that time.

(B) said that he had a friend in the post office who had put his name in for grand jury service a couple of years ago, and that when he was called to the grand jury this fellow thought it was he who had got him, (B), on the grand jury, but (B) knew better he knew who got him on the grand jury.

(A) asked (B) how it came that these people were indicted in Detroit when it happened in New York, (B) said that he did not know, but it appeared as though it had to be tried in Detroit, for some reason.

(B) said that thirty-one people had been summoned for the grand jury, but that it finally simmered down to twenty-five, and they were told they couldn't have twenty-five so two of them were dismissed. (B) said that there were two men who expected to be gone part of the term but that they wouldn't get off the jury, and they wanted the $4 a day. He said they never had a full jury all the time. He said that the two men referred to were money men and didn't need the money they got from the grand jury. (A) asked (B) how long this church case took, and he said it went along several days.

Further deponent sayeth not.

(A2)

Subscribed and sworn to before me this 23rd day of April, A. D. 1928.

(G).

Notary Public, Detroit, Wayne County.

My commission expires May 2, 1931.

KEY

A Signifies one investigator.
A1 Signifies another investigator.
A2 Signifies another investigator.
B Signifies a member of the grand jury.
C Signifies any address or place mentioned.
D Signifies person asked to secure appointment to grand jury.
E Signifies district attorney or representative when named.
F Signifies postal inspector when named.
G Signifies Notary Public.
H Signifies Commissioner of jurors.
L Signifies miscellaneous names referred to.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

(A), being first duly sworn deposes and says:

That on the 24th day of April, 1928, at about twelve noon he called at the resident of one (B), No. (C), Detroit, Michigan.

Deponent was accompanied by (A2), and (A1), both residents of (C).

Deponent knocked at the door of the residence of the said (B), and the said (B) opened the door and invited your deponent and his companions into the house.

The said (B) started to talk of his foot, which had been injured, and the arches that he wore; that he had paid $20. for one set, and $12.00 for another set, and so on, going on for some minutes talking of the foot.

(A2) remarked to your deponent that he was so interested in the case (B) had been speaking to them of the day before, why did not your deponent ask the said (B) how to get on the jury. Deponent answered "I know how to get on, get on the same way (B) did". (A2) asked "How was that". Deponent said "my friend (D), the same one (B) asked" and (B) finished the sentence and said "(D)"—and he added any of those fellows down at the building will get you on, if you know them." (A1) said "Well I came to talk real estate, not jury—I'm not interested in any juries, and if you are interested in getting on the jury Bill go ahead and you fellows fight it out — I was never on one and am not interested." (B) said to (A1) "Why you look like one of the fellows who was on that jury." (A1) said No that he was not on that jury.

Deponent said to (B) that Bumgardner case, or whatever the name was that you were telling me about yesterday — (B) interrupted and said "No, it was the Bogardus case — there are three or four names to it Anneke — Jans — Bogardus." Deponent said that here was what impressed him in regard to that case and that he couldn't get it off his mind— (B) said "What's that"—deponent said "That woman that they had on the witness stand that you told us they accused of perjury and took down and locked up and made her change her tune—did she cry?" Well said (B) "Pretty near." Deponent said "When she came back and they put her on the witness stand again how did she act did she still want to cry?" (B) said "I don't believe they called her back on the stand — when you look through those bars for a little while they are ready to change their tune — I met her in the lobby at noon." Deponent said "Well you told me yesterday that she had changed her tune, how did you know that she changed her tune if she had not been called back on the stand?" (B) said "Someone told me." Deponent asked him who told him about this lady changing her tune, but he said that he did not remember. Deponent said "Well, this woman they accused of perjury what was the matter, what seemed to be the trouble that he tried to scare her, what was the trouble?" (B) said "Well she is one of Gridley's secretaries, and she sat there and told a string of lies, and that is the reason the District Attorney was just trying to scare her." Deponent said "This mailman from New York (B) interrupted and said "You mean postal man" deponent went on "When he testified, was he for the Government, or for this other organization? (B) said "Oh no, he was for the Government." Deponent said "Well, after he got done testfying I suppose he could sit down there by the table and hear this other woman perjuring herself, couldn't he, as he was a government man? (B) said "No, he had to leave the room right away." Deponent said "Don't the District Attorney have an assistant?" (B) said "Yes, he

has an assistant." Deponent said "Well, I suppose he can sit by the table and hear the witnesses testify can't he?" (B) said "No, just one at a time." Deponent asked "Well who is this District Attorney?" (B) answered "(E)." Deponent then asked "Well when you are all sitting there on the jury, and the District Attorney is questioning these different witnesses, the jury can always tell whether he wants to indict them or not — can't they?" (B) said "Yes, in some cases." Deponent asked "How does he do it?" (B) said "Well he reads the law to you, and then he defines it, and says there is nothing to do from the evidence you have heard but to indict whoever is being tried, and bring in a true bill." Deponent said "Well, (B) this Grand Jury business has me all mixed up — I can't get that woman who perjured herself out of my mind, was she scared or excited or what was the matter with her." (B) said "She was just trying to protect that crook of a Gridley." Deponent asked "Whatever become of Gridley?" (B) said "He is out on bonds." Deponent asked "Why did they indict him they did not have him here in Detroit did they?" (B) said "Yes, he's here in Detroit the Federal men know where he is when they want him."

Deponent said "Well, this woman that perjured herself on the witness stand protected this fellow—she is the same one who was scared, was taken down and locked up — is that the same woman who used the word "Positively?" (B) said "Yes yes positively yes that's the one." Deponent said "Well that woman wasn't the only witness they had was she, how many witnesses did they have in that case?" (B) answered "Oh, they had several different witnesses it went along several days — we would get two or three days of it, and then after a while we would get two or three days more — they even had people here from Pennsylvania—that's where this trouble first started I believe. And they had a woman in Ann Arbor that belonged to the organization that told plenty." He continued that they had a man on the stand testifying for his wife, that she belonged to the organization and he did not. Deponent asked (B) if he sat on the trial every day? (B) answered that he did, every day. Deponent said that he supposed the district attorneys were pretty smart men. (B) answered "Well, there was a man by the name of (B), who is a banker or has something to do with a (C), who corrected the District Attorney on several different occasions." (A1) asked (B) if this banker was a square man, and he said that he was that he had voted for an indictment on every case that had come up before the grand jury.

(A2) then said that he had stuck around there long enough that he would like to eat one of those $8 banquets that they put up at the Masonic Temple that they invited (E) to. (A2) asked (B) if he saw the invitation that (E) got. "Well" he hesitated. "Yes, I saw it," but it wasn't $8 it was $2.00—and then he changed it and said the newspapers did not have it at $8.

(A2) asked (B) if all of the jury were there all of the time and he answered that during this case they were pretty well all of them there because they were all interested, that there was twenty to twenty-one there all the time.

Deponent asked the said (B) "How did you know the woman was perjuring herself?" (B) answered "That she had some sort of a statement and that the whole jury knew she was lying—or that in substance." Deponent then said "Well what was the District Attorney trying to do, was he trying to scare her?" And (B) answered "Yes, that's what he was trying to do, scare her."

Further deponent sayeth not.

(A)

Subscribed and sworn to before me this 24th day of April, A. D. 1928.

(G)

Notary Public, Detroit, Wayne County, Michigan.
My commission expires May 2, 1931.

KEY

A Signifies one investigator.
A1 Signifies another investigator.
A2 Signifies another investigator.
B Signifies a member of the grand jury.
C Signifies any address or place mentioned.
D Signifies person asked to secure appointment to grand jury.
E Signifies district attorney or representative when named.
F Signifies postal inspector when named.
G Signifies notary public.
H Signifies commissioner of jurors.
I Signifies miscellaneous names referred to.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

(A1), being first duly sworn deposes and says:

That on the 24th day of April, 1928, at about twelve noon he accompanied (A) and (A2) to the residence of (B), (C), Michigan.

Deponent says that (B) opened the door to them and invited them in and started in to talk of his foot which from the conversation your deponent understood had been injured some time before.

That said (A2) remarked to (A) that as he was so interested in the case (B) had been talking of the day before, why didn't he ask the said (B) how to get on the jury. (A) answered that he knew how to get on that he could ask the same man (B) did. (A2) asked him how was that and (A) said "My friend (D), the same one (B) asked" and (B) finished the sentence and said "(D)." He added that if (A) knew any one of the fellows down at the building they will get you on." Then deponent said that he had come to talk real estate not Grand Jury business, that he was not interested in the Grand Jury, and for the other fellows to go ahead and fight it out; that deponent was never on one, and was not interested. (B) told deponent that he looked like a man who was on that jury, but deponent told him he had not been on the jury.

(A) then asked him about the Bumgardner case or whatever the name was that (B) had been talking of yesterday, and (B) corrected him and said that the name was Bogardus that there were three or four names to it Anneke-Jans-Bogardus.

(A) then told him that there was one thing that had impressed him about that case, and he couldn't get it off his mind, and that was about the woman that they had accused of perjury and who they had taken down and locked up and made her change her tune, and (A) asked the said (B) if the woman had cried. (B) told him that she did, pretty near. (A) then said "Well, when she came back and they put her on the stand again, how did she act, did she still want to cry?" (B) told (A) that he did not believe they put her back on the stand—but he said "Well when you look through those bars for a little while they are ready to change their tune—but I met that woman in

the lobby at noon." (A) then said to him that he had told us the day before that she had changed her tune, and if she did not go back to the witness stand how did he, (B) know that she had changed her tune." (B) told us that someone had told him so, and when (A) asked him who told him, he said that he did not remember. (A) then said to (B) well what was the (E) trying to do scare this woman, what was the trouble? (B) told us that this woman was one of Gridley's secretaries, and that she sat there and told a string of lies, and that was the reason the (E) was trying to scare her. The (A) asked him "About the mailman from New York" and (B) corrected him and said "You mean the postal man." (A) went on "When he testified was he testifying for the government or was he speaking for this other organization?" (B) told us no, that he was for the government. (A) then asked him if when the government man got done testifying he sat down to hear the rest of it, and hear this woman perjuring herself, and (B) told us that he couldn't do that. (A) asked him who the (E) was, and (B) said that it was Mr. (E).

(A) then asked if, while they were all there and the (E) was questioning the witness the Grand Jury could tell whether the (E) wanted them to indict or not, and (B) said yes, in some cases. (A) asked him how he did it, and he said "Well he reads the law to you and then he defines it, and then tells them that there is nothing to do from the evidence but indict whoever is being tried, and bring in a true bill."

(A) then asked him again about the woman who was locked up for perjuring herself, and asked him if the (E) was just trying to scare her, and (B) said that she was just trying to protect that crook of a Gridley. (A) asked him what had become of Gridley, and he said Gridley was out on bonds, and (A) asked him how they indicted Gridley if they did not have him in Detroit, and (B) said that Gridley was in Detroit that the Federal men know where he is when they want him.

(A) said "Well, then this woman that perjured herself and who protected this fellow, is that the same one who kept saying "positively?" (B) aanswered "Yes, positively yes, that the woman." (A) then asked (B) how many witnesses they had on that case, and he said they had several different witnesses that it went along several days—that they would get two or three days of it, and then after a while they would have two or three days more. (B) said that they had people from Pennsylvania, that he believed that was where the trouble first started. He said they had a woman before the Grand Jury from Ann Arbor and that she told plenty. He said they had one man on the stand testifying for his wife; that she was the member of the organization not him. (A) asked (B) if he sat on the jury every day while he was a member of the Grand Jury, and (B) said that he did. (A) said that he supposed those (E) were smart men, and (B) said well there was a man by the name of (B) on the jury a (B) out in (C), and that he had corrected the District Attorney on several occasions. Deponent asked (B) if this (B) was a square man, and he said that he was that he had voted for an indictment on every case that had come up before them.

(A2) asked (B) if all the jury were there all of the time, and (B) said they were nearly all the time because they were all interested, that there were twenty to twenty-one there all the time.

(B) told us that the woman who perjured herself had some sort of a statement with her, and the whole jury knew she was lying, and that the District Attorney was just trying to scare her.

Further deponent sayeth not.

(A1)

.....

Subscribed and sworn to before me this 24th day of April, A. D. 1928.

(G)

.....

Notary Public, Detroit, Wayne County, Michigan.
My commission expires May 2, 1931.

KEY

A Signifies one investigator.
A1 Signifies another investigator.
A2 Signifies another investigator.
B Signifies a member of the grand jury.
C Signifies any address or place mentioned.
D Signifies person asked to secure appointment to grand jury.
E Signifies district attorney or representative when named.
F Signifies postal inspector when named.
G Signifies Notary Public.
H Signifies Commissioner of jurors.
L Signifies miscellaneous names referred to.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

(A2), being duly sworn deposes and says:

That on the 24th day of April, 1928, at about 12 o'clock noon, he called at the residence of one (B), (C), Detroit, Michigan, accompanied by (A1) and (A).

Deponent says that this is a very small place, about four rooms, ill kept, dirty, and it is deponent's understanding that the two brothers live there alone.

Deponent says that (B) started to talk of his injured foot, and after some remarks in regard thereto, deponent referred to the conversation of the day before in regard to the grand jury, and told (A) that as long as he was so interested he should ask (B) how to get on the jury. (A) said he knew how to get on he could ask the same man (B) did "His friend D" the said (B) finished the name for him and said "(D)" and he added that any one of the fellows down at the building if you knew them would put you on.

(A1) then told us that he had come to talk real estate not juries; that he had never been on the jury and wasn't interested, but for the rest of us to go ahead and fight it out. (B) told (A1) that he looked like one of the men on the grand jury, but (A1) told him he was mistaken that he was not on there. (A) then told (B) that the "Bumgardner" case or whatever the name was he was telling him about yesterday, had got on his mind, and (B) interrupted and said that that was not the name it was Bogardus and that there was three or four names to it—Anneke Jans—Bogardus. (A) said that the case had impressed him so that he couldn't get the matter off his mind about that woman that they had tried to scare by locking her up, and that she came back and changed her tune, and (A) asked him if she cried, and (B) said that she did pretty near. (A) then asked him if when they put her back on the witness stand did she still act as if she was going to cry, and (B) said "I don't believe they called her back to the witness stand again. You know when you look through those bars for a while you are ready to change your tune, but I met her in the lobby at noon." (A) said to (B) "Well yesterday you said she changed her tune, and how did you

know that she changed her tune if she was not called back to the stand." (B) said that someone had told him. (A) asked him who had told him, but he said he did not remember. (A) said that he'd like to know what they were trying to do with the woman, scare her or what, and (A) said that she was one of Gridley's secretaries, and that she sat there and told a string of lies, and that was the reason the District Attorney tried to scare her. (A) asked him if when the man from the Government testified he testified for the Government or for this other organization, and (B) told him no, that the man testified for the Government. (B) then asked him if after he got done talking he sat in the jury room to listen to what the woman who perjured herself was saying, and (B) told him that he had to leave the room right away. (A) asked him if the District Attorney had an assistant, and (B) said yes, that he had, and (A) asked him if he would be in the jury room, to hear the witnesses testify, and (B) said only one at a time. (A) then asked (B) if when they are on the jury they can tell whether the District Attorney wants them to indict anyone or not, and (B) said "Yes, in some cases." (A) asked him how he did it, and (B) said he reads the law, and then defines it, and then says there is nothing to do from the evidence you have heard but to indict whoever is being tried, and bring in a true bill. (A) told (B) that he couldn't get that woman out of his head. "Was she excited, scared or what was the matter with her?" and (B) said that she was just trying to protect that crook Gridley. (A) asked him what had become of Gridley and (B) said that he was out on bonds, and (A) said, "How could they indict him when they did not have him in Detroit, and (B) said that the Federal men knew where he was and could get him when they wanted him.

(A) asked him how many witnesses they had in this case, and (B) said that they had several different witnesses, that they would get two or three days of this case, and then after a while we would get two or three days more. He said they even had people there from Pennsylvania, that the trouble first started in Pennsylvania he believed. (B) told us that there was a smart man on the jury by the name of (B) from (C), a (B), and that he had corrected the District Attorney several times; that he had voted for an indictment on every case which had come before the grand jury.

I asked (B) if all the jury were there in the room all the time, and he said that during this particular case they were because they were all interested, that there were twenty to twenty-one there all the time.

(B) told us that this woman who had been accused of perjury had some sort of a statement there, and that the whole jury knew she was lying.

(B) told us that he had seen the invitation that (E) got to the banquet the organization held at the Masonic Temple, and he told us that the newspapers did not say that the banquet was $8 a plate.

(A) asked (B) if the District Attorney was trying to scare that witness, and he said yes, that that was what he was trying to do.

Further deponent sayeth not.

(A2).

Subscribed and sworn to before me this 24th day of April, A. D. 1928.

(G).

Notary Public, Detroit, Wayne County, Michigan.
My commission expires May 2, 1931.

KEY

A Signifies one investigator.
A1 Signifies another investigator.
A2 Signifies another investigator.
B Signifies a member of the grand jury.
C Signifies any address or place mentioned.
D Signifies person asked to secure appointment to grand jury.
E Signifies district attorney or representative when named.
F Signifies postal inspector when named.
G Signifies notary public.
H Signifies commissioner of jurors.
I Signifies miscellaneous names referred to.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

(A), being first duly sworn deposes and says:

That on the 25th day of April, 1928, he called with (A1) at the residence of (B), (C), Michigan at about 12-45 P. M. (A1) went to the door first, and asked for (B), and came back and informed your deponent that the person who had come to the door was (B). Deponent was sitting in front of this residence in a car, and as (B) started out of her place towards the car deponent got out of the car and went to meet her.

Deponent asked her if she was (B), and the (B) answered that she was, and deponent walked right into the house in front of her, and said (B) followed him in. When deponent got to the door he turned and said to (A1) "Come on in John, this will take a few minutes." We all three went into the house, and all sat down.

Deponent asked (B) "You were just dismissed from the Grand Jury wasn't you," and she said "I was." Deponent said "I presume that you got a lot of experience off the Grand Jury while you sat there?" "Would you like to sit there again?" (B) said "Yes, but I can't sit there for another year." Deponent told her that the lady next door was telling him that she would like to sit on the Grand Jury, and deponent asked (B) if she thought that lady would make a good one for the Grand Jury. (B) said that she thought she would. Deponent said that he was talking to another lady about a case which had come before the Grand Jury when the said (B) was sitting on the Grand Jury—the Bogardus case." (B) said "Yes, that was very interesting." (A) said "They sure had that woman who was on stand scared who perjured herself at (C)—(B) said "Yes, she sure did perjure herself she was lying all the time. Who am I talking to?" Deponent told her "(A)." (B) said "You know I don't know whether I am supposed to talk about those things or not, that case has not come up yet has it?" Deponent said "well there are lots of things we are not supposed to talk about that we do." Deponent said to her that they "had the woman witness pretty well scared when they were firing at her that she was perjuring herself, especially the man at the table — let's see what was that man's name, I can't speak his name right now. I believe it was (F) who sat at the table next to the witness." (B) said "Oh, no, it was (B) who lives in (C)." Deponent asked her if (B) said at the table next the witness and accuse her of perjury? She answered "Yes, he sat there quite frequently." She added that she did not know whether she was allowed to talk about these things or not. Deponent said "Well you know you rode to Detroit with (B), and I know practically all of those who sat on the

Def Ex 46 BKh

QUESTIONAIRE

1. Do you understand that the present work and plans of this organization are confined solely to the publication of a book by Mr. Gridley, at our request?	Yes.
2. Do you understand that if the descendants of A. J. B. went to an attorney, it might take him years to investigate and collect the records, and to go over the 250 odd years of history in this matter, and that we, knowing Mr. Gridley had in the past championed our side of the controversy, sought him out to procure his aid, and secure the benefit of his five years' connection with this matter?	Yes.
3. Do you understand that Mr. Gridley finally consented to publish in book form, for public sale, and our purchase, the results of his investigation work in connection with this matter?	Yes.
4. Do you believe it is time the A. J. B. descendants become informed of the facts and proofs in regard to this matter, that they should learn what the records show, before doing anything further?	Yes, after the Book comes out.
5. Do you understand that Mr. Gridley is a disbarred attorney?	Yes
6. Do you understand that he was disbarred as a consequence of his connection with the Bogardus matter, and that he, therefore, cannot perform any duties which an attorney is legally authorized to perform, without incriminating himself?	Yes
7. Do you understand that by securing Mr. Gridley's services in connection with the publication of this book, we have eliminated any expense incident to an independent investigation and have thus secured the services of the only man who has stood up and really fought for our side of this matter in the last fifty years, a man who thoroughly believes in the injustice done the descendants of A. J. B.?	Yes
8. Do you understand that pending the publication of this book, by reason of Mr. Gridley's disbarment, it is insisted that we forget suits, settlements and the law, for his protection?	I do
9. Do you understand that the descendants of A. J. B. agree to finance the publication of this book by Mr. Gridley?	Yes
10. Do you understand that no one individual can finance the publication of this book, and that it is therefore necessary for all to work to secure the co-operation of all the descendants of A. J. B., in other words, a united family or organization?	Yes
11. Do you know of any time in the history of this matter when there has been a united family organization?	No

IONAIRE

plans of this on of a book	Yes
A. J. B. went investigate and ars of history ey had in the ght him out to ve years' con-	Yes
sented to pub- se, the results s matter?	Yes
ndants became is matter, that doing anything	Yes after Book is printed
rred attorney?	Yes
onsequence of t he, therefore, legally author-	Yes
y's services in ave eliminated tion and have stood up and ast fifty years ice done the	Yes
of this book. isted that we ection?	Yes
B. agree to e?	Yes
nance the pub- ary for all to lants of A. J. on?	Yes
matter when	No

Ex 12
Def 12/29/29
BKp

IONAIRE

plans of this on of a book	Yes. That is Sadly my understanding.
A. J. B. went investigate and ears of history ey had in the ght him out to ve years' con-	Yes.
sented to pub- se, the results s matter?	Yes.
ndants became is matter, that doing anything	Most assuredly.
rred attorney?	Yes
onsequence of t he, therefore, legally author-	Yes
y's services in ave eliminated tion and have stood up and ast fifty years ice done the	Yes
of this book. isted that we ection?	Yes
B. agree to e?	Yes
nance the pub- ary for all to lants of A. J. on?	Yes
matter where	No

TIONAIRE

of plans of this ation of a book	Yes
A. J. B. went investigate and years of history idley had in the ought him out to five years' con-	Yes
nsented to pub- hase, the results his matter?	Yes
endants became this matter, that e doing anything	Yes
arred attorney?	Yes
consequence of at he, therefore, s legally author-	Yes
ley's services in have eliminated gations and have stood up and last fifty years stigation done the	Yes
er of this book. nsisted that we nection?	Yes
B. agree to dley?	Yes
nance the pub- ary for all to ndants of A. J. tion?	Yes
his matter where	No

12. Do you believe in the [illegible]	Yes	coast organi-	yes	coast organi-	Emphatically
13. How much have you contributed [illegible]	Fifteen dollars	which you	$15.00	d, which you	$15.00
14. Have you signed an advance subscription for a book?	Yes	book?	yes	book?	yes.
15. If you have signed for more than one, how many?	two.		2 books	?	one.
16. If you have not signed an advance subscription blank—do you intend to sign one, and if so when? Eight months having elapsed, can you complete your payments on such book by January 1st, 1926? If you do not intend to subscribe state why.	—	ank—do you our payments	have signed books paid in full	lank—do you our payments	X
17. Do you understand that by your pledge you undertook to secure the co-operation of others interested like you in this matter, in order to make possible the financing of the publication of that book?	Yes.	ook to secure his matter, in ation of that	yes	ook to secure his matter, in ation of that	Have done so
18. How many members have you been instrumental in bringing into the organization?	I have brought in so many, can't tell the number	l in bringing	one thousand	l in bringing	approximately 50
19. If none—state why?	—		—		X
20. Have you communicated by letter or otherwise with any persons whom you know are descendants of A. J. B. and whom you feel should co-operate?	Yes—hundreds	many persons whom you feel	yes	many persons whom you feel	Many of them
21. If so, how many, and with what results?	—		—		Not enough given results
22. Have you furnished the secretary of your society with the names and addresses of these persons whom you know to be interested as descendants, for the purpose of having them co-operate?	Yes	with the names g be interested co-operate?	yes	ch the names be interested co-operate?	Yes
23. If not—why?	—		—		X
24. Do you belong to any other organization in connection with this matter?	No	ection with this	no	ion with this	No
25. Have you been contributing to the support of any other organization since November 1923?	No	other organi-	no	other organi-	No
26. Do you subscribe for a paper or periodical in connection with this matter, outside of your own organization?	No	connection with	no	nection with	No
27. If so, name them?	—		—		X
28. Have you filed your genealogy with the Chancery Record?	No	ery Record?	no	r Record?	No
29. If so, who prepared that genealogy for you?	—		—		X

coast organi-	yes
d, which you	$5.00 as I paid my two sister 25.00 — subscriber
book?	yes
?	only one
think—do you our payments	
took to secure this matter, in ication of that	yes
al in bringing	I have not kept account but a great many
many persons whom you feel	yes
	Good
with the names be interested co-operate?	Yes
ction with this	no
other organi-	no
connection with	no
ry Record?	no
	none

30. What did you say for that genealogy?	—			X	nothing
31. Do you understand what public opinion means?	Yes	Yes		Yes	yes
32. Do you understand the important part it plays in any matter, and why it is essential in this matter?	Yes.	in any matter. Yes		Yes.	in any matter. yes
33. Do you understand that in order to secure Public Opinion through the sale of the book, it is necessary to have a National Organization, every section represented?	Yes.	Public Opinion have a National Yes		Yes.	Public Opinion have a National yes
34. Do you want the organization plans to continue?	Yes.	e? yes		The question is indefinite. What plans?	? yes
35. If so, are you willing to solemnly pledge and promise your support, so long as Mr. Gridley will stay with this matter?	Yes	promise your is matter? Yes		Will do anything within Reason.	promise your s matter? yes
36. Will you, if approached by a stranger, who seeks an interview in regard to your connection with this matter, get his name and address, and make a full report to your society of the interview?	Yes.	es an interview his name and the interview? Yes		Yes.	s an interview his name and the interview?
37. Do you not think that Mr. Gridley is entitled, as a reward for his fearless championship of this cause of ours, to the unqualified support, both moral and financial of every descendant of A. J. B.?	Yes.	s a reward for urs, to the unery descendant Yes		Naturally	a reward for s, to the unery descendant Yes.
38. Do you understand that delays mean increased cost to us, and that it is necessary to put a stop to these delays, that having had two years of Mr. Gridley's time, it is now up, to us to show that we can lay aside petty jealousy, and give amount sufficient to satisfy him this work can go on uninterruptedly?	Yes	cost to us and that having had us to show unt sufficient dly? Yes		In the light of statement made in question 37. What do you mean by uninterruptedly?	ost to us, and at having had us to show unt sufficient Yes
39. Will you, therefore state what amount, from and after January 1st 1926, you will pledge yourself to pay regularly monthly (outside of your society dues) to create a working fund to carry out Mr. Gridley's directions, western crusades or other matters requiring immediate financing, which cannot be taken out of the book fund?	I pledge ten dollars per month until full to be paid on or before December 31, 1926	d after January ularly monthly orking fund to usade or other annot be taken Subscribed & sworn to paid in full		Upon pay month	after January ularly monthly orking fund to ade or other annot be taken Contribute as [illegible] 100 [illegible]
Dated, ~~November~~ December 21, 1925		(Signed) John W. Tagg		(Signed) W. J. Tomson	(Signed) Florence Lundin Sect
Return to your Society at Detroit		Address 1223 E. Coplin Ave		Address 1654 Leland Ave	Address 1702 E. Lillian Ave
		City Detroit State Michigan		City Chicago State Ill.	City Chicago State Ill.
		I am a member of Detroit Society		I am a member of Chicago Society	I am a member of Chicago No. 2 Sec. Treasurer Society
		JAN 11 1926		JAN 21 1926	

These questions are put to you to satisfy Mr. Gridley that we have a live, fighting organization, willing to back him, and put an end to this wasting of his time, feeling sure that everyone must realize the necessity for continuous financial support in all organization work. What would become of our political organizations, the labor movements, the church and charitable organizations, if they were not financed by their supporters regularly.

Your answers to these questions is imperative, and must be received without delay to be forwarded to Mr. Gridley, for upon your answer depends his future action.

(Signed) Nellcast Dunn
Address 1154 W. 9th Blvd
City Detroit State Mich
I am a member of Detroit Society
DEC 2 5 1925

Gridley that we have a live, fighting organization, willing to
eling sure that everyone must realize the necessity for continuous
become of our political organizations, the labor movements, the
anced by their supporters regularly.
and must be received without delay to be forwarded to Mr.

ridley that we have a live, fighting organization, willing to
ing sure that everyone must realize the necessity for continuous
become of our political organizations, the labor movements, the
nced by their supporters regularly.
and must be received without delay to be forwarded to Mr.

?

jury with you, and if I did not know about these things I certainly would not be here to talk to you about it." Deponent asked her is (B) was there when they tried that case, that he had not happened to ask her when he was talking to her. (B) answered that she did not think (B) sat on the case that she was sick three weeks. Deponent said "Pretty near every one on the Grand Jury knows how they got on, you know how you got on don't you?" "Wasn't it (D), who lives at (C), who put you on?" (B) said "Well, I asked him to put my name in, but I don't know how I got on."

Deponent told (B) that the lady next door to her, on a previous visit he had made to see her, when she, (B) was not at home, had told deponent that it was (D) who had put (B) name on.

On the 26th day of April, 1928, at one thirty P. M. accompanied by (A1), deponent called on (B) at her residence (C) Detroit, Mich. Deponent rang the bell to the apartment house at the said address, and it was the bell with the said (B) name on it, a person answered and said she was (B), whereupon deponent told her he wished to talk to her in regard to her taxes.

Deponent asked the said (B) if she enjoyed being on the Grand Jury, and she said that she enjoyed it very much. Deponent said how did you enjoy that Trinity Church case where the women perjured themselves, and she said "I don't know about that—I am very much interested in that case I went down and saw, no I mean (E) and he said that the case ought to have come up this coming May, but it will possibly be some time in June." Deponent said "I suppose you are going to hear that case" and she answered "Yes, I am going down to hear it when it comes up for I am interested in that case."

Deponent said that he had never had a chance to sit on the Grand Jury that he would certainly like to sit on one for the experience, and asked her "How do you get on the Grand Jury?" She answered "I had a friend get me on the Grand Jury." She added "I don't know how they work it." Deponent said "Well, I don't know any of those people down there so I don't know just how to on there. She said "Well if you can get some one to put your name in, you may get called sooner or later."

The said (B) then asked me if I was a city man? Deponent said yes, that he lived in the city. (B) said "Well, as far as my taxes are concerned they are all paid."

At two thirty in the afternoon on the same day, accompanied by the said (A1), deponent call on (B), at (C), Detroit, Michigan. Deponent rang the janitor's bell and then a woman answered the bell asked her to take him up to the apartment of the said (B). Deponent and the said (A1) then went up to the apartment of the said (B) and after greeting her were invited into her apartment. Deponent said "I don't suppose you know me," and she answered "No." Deponent then said "Well, I am a friend of (B's) in (C)," oh she said "(B)—she sat on the Grand Jury with me." Deponent said "Yes, (B) was telling me all about her experience when she sat on the Grand Jury—especially the Trinity Church case, and she was telling me about a man, let me see what was his name, he sat there at the table when that lady perjured herself—what was his name." She replied "I cannot recall that—there wasn't any man sat at a table." Deponent said "Well I suppose I have it mixed up, but anyhow there was some one accusing the woman of perjury." She said "Why that was (E), he even called her a liar." She asked deponent when he would see (B), and deponent answered that he would possibly see her in a very few days. She then said "Will you tell her for me that (H), who was the jury commissioner, that pulls the names has just resigned, and he is going to Florida." Deponent said "Is that the man that gets you on the jury?" She said "well he was but he resigned his high paid job." Deponent said to her "I would have liked to have got on the Grand Jury before he resigned. I wonder how I could get on now, I would like to get on for the experience there is in it." She said "I don't know how you could get on now, for he's quit." She said "He was a particular friend of mine, I was up to his house the other day for lunch." She added "(B) who was the foreman of the jury was also out to my house for lunch when we were sitting on the jury." Deponent said "Are you very well acquainted with (B)?" She said "Oh yes, (B) is a personal friend of my husbands—you won't forget to tell (B) what I told you," and deponent said "No, I will write that name down to keep in my memory" and deponent took his book out and had her spell it for me.

Deponent said "When you got on the Grand Jury, did you ask (H) to get you on." "I did he is a personal friend of mine" she answered.

(A1) said to her "How did you juryman know that this woman was lying?" and to impress it on her mind I repeated it." She answered "By the way the District Attorney treats the witnesses." Deponent said "Do you mean (E)? "Yes." Then deponent said "You can also tell in all cases whether he wants to indict anybody or not, can't you?" She said "Oh yes, I have sat on the jury before."

Further deponent sayeth not.

(A)

.....

Subscribed and sworn to before me this 28th day of April, 1928.

(G)

.....

Notary Public, Detroit, Wayne County, Michigan,
My commission expires May 2, 1931.

KEY

A Signifies one investigator.
A1 Signifies another investigator.
A2 Signifies another investigator.
B Signifies a member of the grand jury.
C Signifies any address or place mentioned.
D Signifies person asked to secure appointment to grand jury.
E Signifies district attorney or representative when named.
F Signifies postal inspector when named.
G Signifies notary public.
H Signifies commissioner of jurors.
I Signifies miscellaneous names referred to.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

(A1), being duly sworn deposes and says:

That on the 25th day of April, 1928, he called at the (C). That when deponent went into said place he walked up to a man who was standing at the cashier's window, and said that he wanted to speak to (B). The man answered that there were two (B), and deponent said that it was (B) that he wanted to talk to, and the man at the (C) window said

that he was (B). Deponent than said to him "Can I have a few words with you?" and he said "Just a few minutes" and he stepped out in front of the cage.

There was another man standing in the (C) at the time at the (C) window, an attorney by the name of (I). Deponent knew this man and spoke to him, and he spoke to him.

The said (B) came round in front and walked up to your deponent and deponent told him that he had just four questions he wanted to ask of him; that in answering them your deponent assured him, it would not make him any trouble or anything like that. (B) said go ahead. Deponent then said "You were on the Grand Jury" and said (B) answered "Yes." Then he said to deponent I cannot hardly place you. Deponent said he was the man who bought the (C), and (B) answered "Oh yes."

Deponent then said "You see I don't mean any harm." The deponent told him that he was interested in a lady in (C) that was on the Anneke Jans Bogardus case, and (B) answered your deponent that he had taken an obligation not reveal anything that occurred on that matter. Deponent said "Well you would not mind telling me who the man was who sat at the table with a newspaper?" (B) said I took an obligation.

Deponent said that his third question was "I am interested in a lady (I) of (C)." (B) answered "Yes." Deponent said "to whom the man who sat at the table with a newspaper whispered loud enough for the jury to hear him 'look out lady you are perjuring yourself we will get you for that.'" (B) said "I took my obligation—are you a government man?" Deponent said no, that he was not, that he was interested in the party. Deponent then asked "Then you won't say that there was a man sat in that jury room with a newspaper?" (B) said "There was a newspaper there." He added "I took an obligation." During this time this (I) was standing back of me. (B) told me that he was interested in a forgery case that was coming before the Grand Jury pretty soon, and deponent told him that he did not know anything about that.

(B) then started to leave deponent, and deponent said "My fourth question—would you mind telling me how you got on the Grand Jury?" (B) said "(D)" and he paused, deponent said "How, by letter?" (B) did not answer this but he said "I got my summons by registered mail sealed." He added "I am under obligations and that is loyal." (I) standing there said to (B) "You wanted to talk to me at eleven o'clock—come on."

(B) stepped back and said "I would like to see an attorney first before I say anything—I would like to have a nice talk with you some time outside of the (C)."

Deponent did tell (B) when he spoke to him of (I) that he was interested, that he was interested in the book.

(A) says that on the same day he called with (A) at the residence of (B), (C), at about 12:45 P. M. Deponent went to the door of said (B) residence, and asked for (B) and the lady who answered the door, said that she was (B). Deponent told her that there was a man sitting out there in the car who wanted to talk to her some.

Deponent says that he started down to the car to get the said (A), and the lady followed him, but that (A) got out of the car and joined deponent and the lady, and they all three went into the house.

Deponent says that he was present during the entire conversation (A) had with (B).

(A) asked (B) if she had not just been dismissed from the Grand Jury, and the lady said that she had been. (A) then said that she must have had a lot of experience off of it while she sat on the Grand Jury, and asked her if she would like to sit there again. The lady told him that she would, but that she could not sit there for another year. (A) then told her that he had been to see her before, and she was not home, but he saw the lady next door; that the lady next door told him that she would like to sit on the Grand Jury; and (A) asked (B) if she thought the lady next door would make a good Grand Juror. (B) said that she thought she would. (A) then told her that he had been talking to another lady who had been on the Grand Jury at the same time as she was, and had been talking of a case which had come before them—the Bogardus case. (B) said that that was a very interesting case.

(A) told her that he had heard about one of the witnesses being scared, and she said yes that the case was interesting, that they sure had that woman witness scared who perjured herself at (C)—that she sure did perjure herself, she was lying all the time, and then she asked who she was talking to, and (A) told her his name. (B) then said that she did not know whether she was supposed to talk about those things or not, that the case had not come up as yet. (A) told her that there were a lot of things one is not supposed to talk about that they do. (A) then said to her that the woman witness had been scared when they were firing at her that she was perjuring herself, and especially the man at the table had frightened her, and he said "Let's see what was his name, I can't speak his name right now." Then he added that he believed it was a (F), and (B) told him that it was not that it was a (B) who sat there, that he sat there quite frequently. (A) then told her that she had ridden to Detroit with (B), and that he knew practically all of them who had sat on the jury with her, and that if he didn't know about it he wouldn't be there to talk to her. (A) asked her if (B) was there when they tried that Bogardus case, and she said she did not think she was because Mrs. (B) was sick for about three weeks. (A) then told her that most all who got on the Grand Jury know how they got on, and that she must know how she got on; that it was (D) of (C) (C) (C) who put her on wasn't it, and (B) said that she had asked him to put her name in, but that she did not know how she got on.

(A) told (B) that the lady next door had told him on the previous visit that it was (D) who had put (B) name in for the Grand Jury.

On the 26th day of April, 1928, at one thirty P. M. deponent accompanied (A) to interview one (B). Deponent was present during the conversation between the said (A) and (B). (A) after some conversation asked her how she liked being on the Grand Jury, and she told him she enjoyed it very much: (A) asked her how she enjoyed the Trinity Church case where the woman perjured herself. (B) told (A) that she didn't know about that that she was much interested in that matter; that she "had been down and seen (E)—no I mean (E) and he told me that the case should have come up in May, but that it will possibly come up some time in June." (A) asked her if she was going down to hear that case, and she told him yes that she was as she was interested in that case.

(A) told her that he had never had a chance to sit on the Grand Jury that he would certainly like to get on, and he asked her how it was done. She said that she had a friend get her on the Grand Jury and that she did not know how it was worked. (A) told her that he did not know any of them down there, so he did not know how he could get on. (B) said that if he could get someone to put his name in he could get called sooner or later.

At two thirty in the afternoon on the same day deponent accompanied the said (A) to call on one (B), (C), Detroit, Michigan. Deponent was present during the conversation between the said (B) and the said (A). (A) asked her if she knew him, and she said that she did not. (A) then told her that he was a friend of (B) of (C), and (B) said "Oh (B) (B)—she sat on the Grand Jury with me." (A) said that (B) had told him all about her experience on the Grand Jury, and about that Trinity Church case, and that there was some man sitting at a table who accused the women witnesses of perjury, and (B) said that that was not a man at the table that that was (E) the District Attorney, that he even called the woman a liar. She asked (A) when he would see (B), and when he did to tell her that (D) who was the jury (D) who pulls the names had just resigned, and is going to Florida. (A) asked her if that was the man who gets you on the jury and she said that he was, but that he had resigned "His high paid job." (A) said well he would have liked to get on the Grand Jury before he resigned; that he would like to get on for the experience there was in it. (B) told him that she did not know how she could get (A) on now that this man (D) had quit. She stated that this man (D) was a particular friend of her; that she was up to his house the other day for lunch. She also stated that (B) "Who was foreman of the Grand Jury at that time" was also out to her house for lunch when we were sitting on the Grand Jury. (A) asked her if she was well acquainted with (B), and she said that (B) was a personal friend of her husband's. (A) then asked her "When you got on the Grand Jury did you ask (D) to get you on—she said yes, that he was a personal friend of hers.

Deponent then asked the said (B) "How do you jurymen know that this woman was lying" and repeated it a second time, and she answered that they knew it by the way the District Attorney treats the witnesses, and (A) asked her if she meant (E), and she said she did. (A) then said "You can tell in all cases whether he, the District Attorney, wants to indict anybody or not, can't you," and she said "Oh yes, I have sat on the jury before."

Deponent states that on the 26th of April, 1928, when (A) and himself called at the home of (B) he asked the said (B) how she got on the Grand Jury and she answered that she had a friend get her on the Grand Jury.

Deponent says that on the 27th day of April, 1928, he accompanied (A), (C), Michigan, at one thirty P. M. Deponent says they called at the residence of a (B), that he asked said (B) if she knew anyone in (C) that had sat on the Grand Jury, and she said yes, the furniture man (I), and that there was a woman by the name of (B) whom they got about three weeks ago. Deponent then accompanied (A) to the furniture store of (I); that he went into the store of the said (I) and asked for him; that he was a man about thirty-five or forty years of age. (A) asked him if he could tell him how to get on the jury, that he understood from (B) that he had been on the jury; that he would like the experience of it, and if he could tell him how he could get on. (I) said "Well if you know any big politician they will take your name right in for you. You are not supposed to know anything about it, but you go to your friend the big politician, and he will write in for you and it will not be long before you are called. That is the way they work it, and that is the only way I know that you can get on. You ask some big politician and he puts your name in for you and then you get called, that's the only way I know of to work it. "I know they go to (I) from hereabouts, and then there was another lady by the name of (B)" he added "But I don't know of anyone else around here.

Further deponent sayeth not.

(A1)

.....

Subscribed and sworn to before me this 28th day of April, A. D. 1928.

(G)

.....

Notary Public, Detroit, Wayne County, Michigan.
My commission expires May 2, 1931.

You have seen by the statutes, a lawful jury must:

1. Be a person assessed on the assessment roll of the township or ward for the same year:
2. Have the qualifications of electors:
3. Possession of their natural faculties:
4. Not infirm or decrepit:
5. Good character:
6. Approved integrity:
7. Sound judgment:
8. Well informed and conversant with the English language:
9. Who have not made, and in whose behalf there has not been made an application to be selected and returned as jurors.

How about the lady who knew the commissioner and asked to be put on the jury?

How about the lady juror who had not been on the assessment roll for ten years?

How about the juror who was deaf?

How about the speakeasy?

One question was this a hand-picked jury?

Under these conditions is it not possible to persecute any man who is in someone's way?

Has not the Grand Jury system under these circumstances become somewhat of a menace, instead of a protection for a man against persecution?

Are not such conditions more damnable than ever existed in the dark ages?

Freeman! This is your land! One life matters not so much, but I beseech you to help wipe out these conditions, for the good of your children and the future of Old Glory!

Validity.

Was this indictment invalid?

A scrap of paper?

Were these jurors qualified to sit?

In Cooper vs. United States, 247, U. S. 45, 47: The Court said:

"The question which we are called upon to determine is as to whether the court below erred in refusing to arrest the judgment on the ground that the indictment was invalid.

The constitution (Court Amend 5) provides that one charged with certain offences shall not be placed upon trial until the Grand Jury shall have investigated and return a true bill, then, technically speaking, such paper cannot be called a bill of indictment until it is found a true bill, by a properly constituted Grand Jury. An indictment can only be found upon the testimony of a competent and material witness or witnesses who must be sworn and examined before the Grand Jury."

* * * * * * * * * *

"A motion in arrest of judgment may be used for the purpose of taking advantage of any defects in the indictment based on knowledge obtained during and after conclusion of trial."

Crowley vs. United States, 194 U. S. 461:

The United States demurred to the plea on the ground that the matters set forth in it, so far as they controlled or were applicable to the summoning and empaneling of the Grand Jury in the Court Below, and disclosed no illegality therein, and stated no reason why the accused should not be required to plead to the indictment.

The demurrer to the plea was sustained and the plea overruled. The defendant then demurred to the indictment and the demurrer being overruled he pleaded to the jurisdiction of the Court upon the ground that it had no authority to proceed at its then special term, but could only proceed at a regular term. That plea was also overruled. The accused was then arraigned and plead not guilty, and a trial was had resulting in a verdict of guilty and a sentence of four years imprisonment in the penitentiary.

Justice Harlan wrote the opinion:

At page 469:

If the court had given effect to the above act, and held those to be disqualified as jurors who were declared by its provisions to be incompetent, then it would have proceeded as it was required by the Revised Statutes of the U. S. and by the Foraker Act to proceed, in the same manner as a Circuit Court of the United States would proceed under the law of such state prescribing the qualifications of jurors. But it did not proceed in that manner. It refused to follow the local statute.

It remains now to inquire whether the objections to the jurors above named was taken in the proper way and in due time.

At page 470:

In Doyle vs. State, 17 Ohio 222, an objection by special plea that one of the Grand Jurors by whom the indictment was found was disqualified to act, was held not to come too late, the Court saying that no objection can come too late which discloses the fact that a person has been put to answer to a crime in a mode violating his legal and constitutional rights.

In McQuillan vs. State, 8 S. & M. 587-597, Chief Justice Sharkey delivered the judgment of the court in observing that no one can be called to answer a charge against him unless it has been preferred according to the forms of law, and that anyone indicted by a Grand Jury can deny their power, said, "the question is how is this to be done?"

The law furnishes the same security to all, and the same principle which gives to a prisoner in Court the right to challenge gives to one who is not in court the right to accomplish the same end by plea, and the authorities sustain such a plea.

At page 472:

The interest of an accused person under indictment by the Grand Jury, commences at the time of the finding of the indictment. This is the point of time when as to him the legal number of qualified men must sit upon the Grand Inquest. Indictments not found by at least twelve good and lawful men are void at common law.

Cros. Eliz. KK 654;
2 Burr 1088;
2 Hawk P. C. 307.

It is said by Hawkins, P. C., B. 2, Ch. 25 (see 28) That if any one of the Grand Jury who found an indictment be within any one of the exceptions in the statutes—he vitiates the bill, though ever so many unexceptional persons joined with him in finding it.

Barney v. State, 12 S. & M. 68-72.

See page 473:

It is the right of the accused to have the question of his guilt decided by competent jurors before he is condemned to punishment. It is his right in the first place to have the accusation passed upon before he can be called upon to answer to the charge of crime by a Grand Jury composed of good and lawful men. If the jury be not composed of such men as possess the requisite qualifications, he ought to be put upon his trial in avoidance of the indictment.

VanHook vs. State, 12 Tex. 252-268.

In State vs. Duncan and Trott, 7 Uerger 270-275. The accused pleaded in abatement that one of the Grand Jurors who participated in the finding of the indictment was disqualified.

Chief Justice Catron said: Suppose an indictment was found by a Grand Jury, no person composing which was qualified, all will admit the indictment would be merely void in fact and ought not to be answered if the fact was made legally to appear; or if anyone be incompetent it is clearly void, because the proper number to constitute the Grand Inquest is wanting, and because he is incompetent shall not be of the triers of the offence at any stage of the prosecution.

The government called attention to Sec. 1025 of the Revised Statutes that "No indictment found and presented by a Grand Jury in any district or circuit court or other court of the United States, shall be deemed insufficient nor shall the trial, judgment or other proceeding thereon be affected by reason of any defect or imperfection in the matter of form only which shall not tend to the prejudice of the defendant."

This section can have no power in the present case, for the disqualification of a Grand Juror is prescribed by statute, and cannot be regarded as a mere defect or imperfection in form; it is a matter of substance which cannot be disregarded without prejudice to the accused.

We adjudge only that the presence on the Grand Jury of persons summoned after the local statute took effect and who were disqualified by that statute, those facts having been seasonably brought to the attention of the court by a plea in abatement filed before arraignment vitiated the indictment.

See also State vs. Clough, 49 Maine 573:

State vs. Herndon, 5 Blackf. 75—it was ruled that if a Grand Juror was disqualified for any reason the accused may, before issue joined, plead the objection in avoidance.

In United States vs. Wells, 163 Fed. 329, the Court said:

"If a Grand Jury, not properly organized as such, for instance, with less than the number required by the statute, should present even a guilty man for trial, his rights would be invaded, and it would not for a moment be contended that such a proceeding, as against a timely plea, could have validity."

In Hill vs. People, 16 Mich., p. 351, the Court held that the defendant was entitled to a new trial, as follows:

1. The law does not recognize such unqualified juror at all. The case is to be treated as one in which the defendant was tried by all jurors, which is unconstitutional.
2. The argument was raised by the district attorney that by reason of the defendant's failure to chal-

lenge the particular juror it amounted to a waiver of his right to do so. The Court held, however, that this failure to challenge a "petit juror" was no waiver of the defendant's right because the defendant had a right to presume that he was being confronted by 12 qualified jurors and that with regard to the particular case in hand the question of waiver could not arise since the defendant had no opportunity of and would have no opportunity to challenge a member of the Grand Jury.

3. The doctrine of waiver has no application in choosing jurors in criminal trials.

Citing from the opinion of the Court:

4. "It is the duty of the courts to see that the constitutional rights of the defendant in a criminal case shall not be violated, however negligent he may be in raising objection. It is in such cases emphatically that consent should not be allowed to give jurisdiction."

"The statute requires that jurors shall have the qualifications of electors. It is admitted this juror was not qualified. This is not a case of a partial disqualification growing out of, or connected with his relation to this or any other particular cause; but a total disqualification to be a juror in any case"

"The law does not recognize him as a juror at all; and in legal contemplation the case is to be treated as if he had never been placed upon the Grand Jury; if not still worse, as an outsider who had no right to participate in their deliberations, and whose illegal participation may have had an improper influence upon the verdict. The most favorable view for the prosecution which can be taken is to consider the place of this juror to have been left blank, and that this jury, therefore, consisted of but eleven men."

In Stuart vs. Kimball, 43 Mich., p. 448, the court said:

"It is mentioned as something well known and understood under a particular name and by implication, at least, even a waiver of its advantages is forbidden. If the accused himself cannot waive them (i.e., constitutional rights) plainly the legislature cannot take them away * * * * AND NOTHING IS BETTER SETTLED UNDER AUTHORITIES THAN THAT THE LEGISLATURE CANNOT TAKE AWAY A SINGLE ONE OF ITS SUBSTANTIAL AND BENEFICIAL ELEMENTS."

People vs. Vanderpool, 1 Mich. Nisi Prius at p. 157 (1870).

"Statutory provisions direct officers from what source they are to obtain names of jurors and then in making their selection they have no discretion as to where they shall obtain the names of the jurors to be returned and can only use their discretion as to the particular names to be selected from that source. I do not consider that it becomes important to discuss the reasons of the statute. It is sufficient that it exists. * * * The defendant has a right to demand the extension of its full requirements and if the officers of the law fail to do this it is error. * * * (here citing the case of Hill vs. People, supra). * * * This provision of the statute is inexorable and cannot be ignored by the people or waived by the defendant."

GRAND JURY PROCEEDINGS SECRET IMPROPER CONDUCT IN GRAND JURY ROOM

In United States vs. Huston, et al., 28 F. (2) 451, June, 1928, the Court said:

"In a charge to the Grand Jury some years ago, we said, 'You are organized under the common law, with all the characteristics and functions which pertain to such an organization.' In its inception, the Grand Jury was an independent branch of the court, whose inquiries were conducted within its own membership, and in the absence of any person not regularly drawn to participate therein as a member thereof. Its origin is not obscure, and the occasion therefor, a matter of historic knowledge, was to provide from the body of the people an instrumentality by which the liberties of citizens were safeguarded against the arbitrariness of government. For convenience, however, and to secure an observation of the formalities of procedure, an innovation was soon established upon the original functioning of Grand Jury inquisitions, whereby a representative of the crown, filling the office of prosecutor was permitted to be present during the sitting of the Grand Jury, to conduct evidence on the part of the crown. It should be noted that all the attorney for the crown was permitted to do was to 'conduct evidence.' It is still not permissible in the federal practice for the prosecutor to otherwise participate in the jury's proceedings. In this connection it might be said that we are not disagreeing with the conclusions of Judge Hand in United States vs. Rintelen (D. C.) 235 F. 787. Judge Hand, examining the facts, found that the conduct of the District Attorney was within the limitations of Judge Field's charge on this subject in 2 Sawy. 667, Fed. Cas. No. 18255, and as approved in the United States vs. Cobban (C. C.), 127 F. 713. The District Attorney's power to 'conduct the evidence' is not limited to mere interrogations, but involved is the right, if called upon, to advise how the fasts elicited meet the applicable law, provided that he does so judicially. This is a privilege which we have frequently presented in instructions to our own grand juries. Its exercise demands restraint and tact; to go further, to press for a bill, or to exhibit partisanship against the subject of inquiry, will gravely affect the stability of the result. At the time of the adoption of the constitution in 1787, with a Fifth Amendment, forbidding the holding of any person to answer to an infamous crime unless on presentment or indictment of a grand jury, it was this common law organization which was meant, in the functioning of which none but members participated, except for the assistance of the prosecutor in the taking of evidence, but not to be present during either the deliberations of the body upon a case or the balloting of the members to decide whether or not a bill of indictment should be returned.

"From 1787 to the present time, therefore, a federal grand jury has been a body organized and functioning as by the common law at the date of the adoption of the amendment; and it seems reasonably clear that no power abides in the Congress to affect or modify the integrity and independence of the body as established. There is no reason in our judgment to abate the jealous consideration for the rights and liberties of the individual which directed the institution

of a grand jury at the beginning, and which later impelled the adoption of the amendments.

* * * * * * * * * *

Grand jurors are accustomed to the presence of a local prosecutor to assist in the development of facts, and are not slow to act with a proper independence against him; but when it is seen that the government is moved to bring into the proceedings a special representative of the executive branch, the pending charge may receive, in the minds of the jury, a particular emphasis which tends to sway judgment unconsciously.

* * * * * * * * * *

"We must therefore hold that the pleas in abatement are well taken; that therefore the indictment herein should be set aside.

"A second special assistant to the Attorney General, one Dodds, also took part in our Grand Jury proceedings in this case. No necessity exists to discuss whether his authority was sufficient, for clearly the proceedings before the Grand Jury were vitiated by the unauthorized appearance therein by Mr. Rush."

In United States vs. Fall, 10 Fed. (2) 648, December 19, 1925, the Court said:

"The lower court held that Peyton Gordon, as District Attorney, was entitled by law to take part in the proceedings of the Grand Jury, but that the presence of Oliver E. Pagan, as special assistant to the Attorney General at the proceedings, was unauthorized. Upon that ground the Court sustained the plea in abatement, and quashed the indictment. This appeal followed.

"It is conceded that the presence of an unauthorized person with the Grand Jury during the consideration of a charge, would invalidate any indictment thereupon found.

"By the weight of authority, the prosecuting attorney may and should attend before the Grand Jury while they are receiving evidence, and may assist in the examination of witnesses, and he may be accompanied by his assistants, including his stenographer.

"No one else can be present during the examination of witnesses, and no one, not even the prosecuting attorney, can be present during the deliberations of the jury."

Wilson vs. State, 70 Miss. 595. In this case a conviction on indictment for forgery was reversed because it appeared that the attorney for the person defrauded by the forger had been before the grand jury urging the bringing of the indictment.

State vs. Virginia-Carolina Chemical Co., 163 Fed. 66. The attorney general was not authorized to appoint special assistants to a district attorney having the authority or right to appear before and participate in the proceedings of a Grand Jury, and the presence of two such attorneys specially appointed for a particular case and their examination of witnesses on whose testimony an indictment was brought renders such indictment invalid.

U. S. vs. Wells, 163 F. 313. The district attorney has no right to participate in or be present during the deliberations of the grand jury; nor to express opinions on questions of fact, or as to the weight and sufficiency of the evidence.

In U. S. vs. Edgerton, 80 F. 374: No person, other than a witness undergoing examination and the government's attorney, can be present at the session of a Grand Jury; and an indictment should be quashed where an expert witness was being examined and put questions to him.

In Latham vs. U. S., 226 F. 420: Presence of district attorney's clerk and stenographer taking notes of the testimony of witnesses before the Grand Jury, held violation of defendant's right, and ground of quashing the indictment, although no prejudice shown.

United States vs. Wells, 163 Federal Reporter, 313: The defendants filed motions to quash, which were overruled in September for reasons then assigned. They also presented two pleas in abatement. The first related to the statute of limitations. It was agreed by counsel in open court that this question was properly raised by demurrer theretofore interposed.

Plea No. 1 was thereupon overruled.

The second plea in abatement charges misconduct of the district attorney, whereby the defendants were denied a fair and impartial investigation of the charges against them.

* * * * * * * * * *

The prosecution then by agreement submitted affidavits of the jurors.

What was said extracts from the testimony will best disclose:

"Well, I took from his talk that he wanted indictment brought on those parties."

"The district attorney brought a list of names into the grand jury room and in referring to them said, 'We have plenty of evidence to convict them'."

That the district attorney repeatedly said he was making the investigation under instructions from the Department at Washington.

* * * * * * * * * *

Quotations have been made from the evidence given by the witnesses in open court, where there was an opportunity for full disclosure.

In relation to the affidavits the prosecution had the decided advantage. The attendance of grand jurors was obtained by subpoena. They were accessible to him, and not to the other side. That this had its bearing I have not the slightest doubt.

* * * * * * * * * *

He did state (the district attorney) that he did not invite or initiate the proceedings, but was acting under positive orders from the department in the prosecution.

Defendants Martin and Pritchard are lawyers. Martin was under investigation. This the prosecutor and, of course, the Grand Jury knew. He was called as a witness, without being informed that he was the subject of inquiry, and, if he had any suspicions, it must have developed from the character of the questions propounded while being examined. That he testified against himself regarding transactions vital and material to the issue, is abundantly disclosed by the record. Pritchard at the time the investigation began was residing at Los Angeles. In obedience to a subpoena he left his home and journeyed to Boise, where the inquiry was in progress. He was met at the train by a deputy marshal with a warrant, and was taken into custody, although possibly the warrant was not served until afterwards. The marshal had specific instructions not to allow him to confer with anyone, but to take him directly to the office of the district attorney. Here he was questioned, and stenographer was brought in to take down what he said. He was threatened. The threat was made to take him before the court. He was then taken before the grand jury as a witness, concerning his own connection with, and upon issues pertinent to the charges against him, when he was under investigation, and when he did not know that this was the purpose in view. This is admitted. He was treated to such remarks as the following:

"Now you know you are lying about that."

"I will put the screws to you."

He was badgered by a series of questions concerning his own conduct while under arrest. These defendants were subjected to rigid cross-examination before the grand jury. They were not treated as it may be supposed other witnesses are, as they were often met with questions of this character:

"Do you want this Grand Jury to understand?"

"Do you say to this Grand Jury?"

and the like.

This concerning matters of the utmost importance as applied to the charges against them individually, and clearly implying that the object of the inquisition was to secure declaration relating to their own connection with the conspiracy and for which they were subsequently indicted upon the evidence thus taken.

The examination was carried on from the standpoint of

HOSTILITY

rather than friendly inquiry.

In considering the conduct of the district attorney, we are compelled to recur to fundamentals. The provision of the Fifth Amendment of the constitution that "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except," etc., is a reproduction of Magna Charta, which imposed the same restraint in this language:

"No man shall be taken (that is) restrained of liberty by petition or suggestion to the king or to his council, unless it be by indictment or presentment of good and lawfull men, where such deeds be done."

The rights of the defendants are to be measured by the grand jury system as it existed and was understood at the time of its adoption. At the common law the prosecutor had no right to attend the sessions. It is even doubtful whether he had a right, unsolicited, to send indictment to the inquisitorial body for consideration. Edwards on the Grand Jury, pp. 110, 111, 113. It is a familiar historical fact that the system was devised to prevent harassments growing out of malicious, unfounded, or vexations accusations. That it serves the purpose of allowing prosecutions to be initiated by the people themselves, in no way detracts from the fact that it stands as a safeguard against arbitrary or oppressive action, and so it has often been authoritatively declared.

In his dissenting opinion in Hurtado vs. California, 110 U. S. 516 (the majority opinion in no way conflicts upon this point), Mr. Justice Harlan commended this from Story's Constitution:

"Grand juries perform most important public functions, and are a great security to the citizens against vindictive prosecutions either by the government or by political partisans or by private enemies."

* * * * * * * * * *

This learned judge observed that the Grand Jury was to be regarded as standing against "oppressions of power, the virulence of malice, and the intemperance of prejudice." Here the grand jury was duly qualified and impaneled, and it remains to inquire whether the occurrences already related were of such a nature as to infringe the constitutional rights of the defendants. To this end reference must be had to the decisions.

The district attorney should not give advice or express his opinion as to the sufficiency of the evidence. In re District Attorney of the United States, Fed. Cas. No. 3925 (vol. 7, p. 745); Ex parte Crittendon, Fed. Cas. No. 3393a (vol. 6, p. 822); Commonwealth vs. Frey (Quart. Sess.), 11 Pa. Co. Ct. R. 523; Edward on the Grand Jury, p. 127.

He cannot advise upon the law. United States vs. Kilpatrick (D. C.), 16 Fed. 766.

He has no right to be present during the deliberations of the grand jury. Charge to Grand Jury, Fed. Cas. No. 18,255 (vol. 30, p. 992), 2 Sawy. 667; State vs. Adam, 40 La. Ann. 745, 5 South 31; Commonwealth vs. Bradner et al., 126 Pa. 199, 17 Atl. 600; Rothschild vs. State, 7 Tex. App. 519; Edward on the Grand Jury, p. 128. The great justice in his charge to the grand jury said:

> "The district attorney has the right to be present at the taking of testimony before you, for the purpose of giving information or advice touching any matter cognizable by you, and may interrogate witnesses before you; but he has no right to be present pending your deliberations on the evidence."

* * * * * * * * * *

The fundamental idea which runs through the statutes and decisions apparently is that the prosecutor must remain neutral, must be impartial, must not undertake to control the findings by undue influence.

* * * * * * * * * *

Nor can it be said that this statement standing alone would necessarily be prejudicial; but upon the proofs here it is manifest that to sustain this indictment would be to establish a precedent, to which political partisanship, religious intolerance, or anti-religious intolerance—for the latter is quite as apt to exist as the former—could point as a justification for upholding the return of an indictment through popular demand, public excitement, persecution, or personal ill-will. We will do well to adhere to old landmarks and established principles, which are quite sufficient to bring to trial all who are guilty of an infraction of the laws of the land. If it be competent to do that, which it is admitted the prosecutor did in this case, then the Grand Jury system has ceased to stand for that for which it anciently stood, and for which it was adopted in this country. The supreme court has said that it is better that a prisoner should escape altogether than that a judgment of conviction for an infamous crime should be sustained where the record does not show that there was a valid trial. Crane vs. United States, 162 U. S. 625.

Having referred to various decisions of our courts, relating to the effect of the presence of a third party in the grand jury room, or as the cases call it "an unauthorized party", and also as to the rule governing the conduct of the prosecutor before the grand jury, let me present the full records of the case on appeal to the Circuit Court of Appeals, with respect to these questions.

As you proceed with a careful study of these documents, these are the questions which cannot fail to be uppermost in your mind, as they have been in the mind, in fact have been asked by everyone who has seen these papers, lawyers and laymen alike:

Was the indictment illegal?

Have I been unlawfully restrained of my liberties?

Was this a fair, unbiased, unprejudicial presentation of this matter to the grand jury?

What was the motive for Inspector Walter, standing over his witnesses while testifying before this Grand Jury?

Why was it that Walter never made an affidavit in denial of his presence before that grand jury, as charged?

Do you believe that any Grand Jury who will contradict himself by his own affidavit, is fit to serve on any Grand Jury?

Do you believe these men were coerced?

Do you believe any body of Grand Jurors who would permit ladies to be treated as the witnesses Mrs. Brower and Mrs. Matthews were treated, without protest, are competent to serve on any jury?

Will the affidavits of Lettie B. Kist, Charles Cation and Blee S. Hatt, sworn to in July, 1927, convince that the assistant United States district attorney, who conducted these Grand Jury proceedings, entered that room with any other purpose than to persecute the two defendants?

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

SIXTH CIRCUIT

NO.....

WILLIS T. GRIDLEY, AND GLADYS WRIGHT,

APPELLANTS,

VS.

UNITED STATES OF AMERICA,

APPELLEE.

TRANSCRIPT OF RECORD

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

MOTION OF WILLIS T. GRIDLEY TO QUASH INDICTMENT

(Filed March 6, 1928)

Now comes Willis T. Gridley one of the defendants in the above entitled cause, by Harry J. Lippman his attorney and herewith petitions the court to quash the indictment as heretofore in this cause against the defendant returned for the following reason to-wit:

One of the jurors serving on the Grand Jury investigating the offense of which this defendant is charged, and returning as against this defendant the indictment herein filed, was a person by the name of Pearl Prentice, residing at 350 West Huron Street in the City of Pontiac, Oakland County, Michigan, and a person not a taxpayer and not assessed on the assessment roll in accord with the regulations and provisions of Section 12190 of the 1915 Compiled Laws of the State of Michigan.

This motion is based upon the records and files of the Grand Jury returning the indictment herein and petition and affidavits hereto attached and made to form a part hereof.

Attorney for Defendant.

State of Michigan, County of Wayne ss:

Willis T. Gridley, being first duly sworn deposes and says:

That he is a defendant in the above entitled indictment for fraudulent use of the mails.

Deponent understands that the statutes of the United States specify that the qualifications of jurors to serve in this Court shall be the same as those of jurors in the highest courts of the State in which this court is held, and that the laws of the State of Michigan in regard to the selection of jurors, provide as follows:

> Vol. III, Page 43, Compiled laws 1915. (12190) Section 121: The said officers shall proceed to select from the persons assessed on the assessment roll of the township or ward for the same year, suitable persons being citizens having the qualifications of electors to serve as jurors; and in making such selection they shall take the names of such only as are not exempt from serving on juries, and are in possession of their natural faculties, and not infirm or decrepit, of good character, of approved integrity, of sound judgment well informed and conversant with the English language and free from legal exceptions, and who have not made, and in whose behalf there has not been made to the officers mentioned in the preceding section any application to be selected and returned as jurors.

Deponent has made two endeavors to secure a list of the Grand Jury sitting and hearing this matter in the United States District Court, but has been informed that this list could not be given out until after the Grand Jury was dismissed. Therefore your deponent's investigations as to the qualifications of these jurors has been confined to one of the jurors who was identified by members of the interested organization as serving on the Grand Jury sitting at the time the witnesses were being called in regard to this matter.

The juror referred to is a lady by the name of Miss Pearl Prentice.

On the 3rd day of March 1928, your deponent, having in mind the section above referred to, interviewed, in the presence of Roy Whims and Harry B. Cole (see affidavits annexed) the above named juror Pearl Prentice, at her residence 350 West Huron Street, City of Pontiac, where the said Pearl Prentice has resided for some years, as your deponent is informed and verily believes, for the purpose of ascertaining whether or not she is a taxpayer, or owned any real property, as by the statutes she is required to do to be eligible for jury service.

That your deponent particularly asked the said Pearl Prentice the following questions:

"Do you own any real estate in the City of Pontiac?" to which the said Pearl Prentice answered "No."

"Do you own any real estate and pay taxes on the same anywhere?" To which she answered "No."

"Do you pay any taxes anywhere?" To which she answered "No."

The said Pearl Prentice further stated that she and her mother had built a certain house on West Huron Street in the City of Pontiac, Michigan, which was next door to where she lives now, but that they had sold this property some ten (10) years ago to a man by the name of Kelly. Your deponent then told the said Pearl Prentice that she was fortunate that she did not have to pay any taxes whatsoever, to which the said Pearl Prentice answered "Yes."

Deponent further states that Mr. Roy Whims inquired of the said Pearl Prentice concerning real estate that she formerly owned on Auburn Avenue at Center Street in the City of Pontiac, Michigan, and the said Pearl Prentice informed Roy Whims that she had disposed of that real estate in the year 1913 and that at that time she had owned it jointly with her mother.

In addition to the above, your deponent made inquiries of the City Treasurer of Pontiac Michigan, as to whether the said Pearl Prentice was listed as a taxpayer on real property, and was informed that their lists do not include names, but merely lot and block identification. Your deponent then asked the City Treasurer to examine their assessment and tax roll to ascertain if the said Pearl Prentice paid any taxes on personal property. Such examination was made, and advice was given deponent that she was not assessed for any personal taxes. Whereupon at deponent's request the following paper was prepared and given to your deponent:

"March 3, 1928.

According to the records of this office we do not have a personal tax against Pearl Prentice or Prentis for the year 1927. This tax roll is last one we have.

George C. Johnston,
Blynn
City Treas."

Your deponent says upon information and belief that the Pearl Prentice he interviewed at 350 West Huron Street, Pontiac Michigan is the same Pearl Prentice who served upon the Grand Jury January 25, 1928, and was one of the Grand Jurors that heard the evidence upon which this indictment was founded.

Willis T. Gridley

Subscribed and sworn to before me this sixth day of March A. D. 1928.

Florence R. McGivney
Notary Public, Detroit,
Wayne County, Michigan.
(Seal) My commission expires May 2, 1931.

State of Michigan, County of Oakland ss:

Harry B. Cole, being first duly sworn, deposes and says that he is personally acquainted with and knows Pearl Prentice.

Your deponent further says that on the third day of March, A. D. 1928, at about 11:00 o'clock A. M. on said day, he called upon, in company with, Willis T. Gridley and Roy Whims, at the residence of Chauncey Harris, 350 West Huron Street, Pontiac, Michigan, and had a conversation with said Pearl Prentice. That the conversation with the said Pearl Prentice was in substance as follows:

Your deponent inquired of said Pearl Prentice concerning real estate that she formerly owned on Auburn Avenue at Center Street in the City of Pontiac, Michigan. The said Pearl Prentice said that she had disposed of this real estate in the year 1913, and that at that time she owned it jointly with her mother.

That the said Willis T. Gridley asked the said Pearl Prentice if she owned any real estate in the City of Pontiac, and she said "No." She further said that she and her mother had built a certain house on West Huron Street in the City of Pontiac, Michigan, which was next door to where she lives now, with her mother, but that they had sold this property ten (10) years ago, to a man by the name of Kelly.

Mr. Gridley then asked if she owned any real estate and paid taxes on the same, anywhere, and she said "No."

Mr. Gridley then asked her if she paid any taxes whatsoever, and she said "No."

Mr. Gridley then said, "You are fortunate that you do not have to pay taxes," and Pearl Prentice replied, "Yes."

And further deponent says not.

Harry B. Cole

Subscribed and sworn to before me this third day of March, A. D. 1928.

Ralph T. Keeling
Notary Public, Oakland
County, Michigan
(Notarial Seal) My commission expires Jan. 5, 1932.

State of Michigan, County of Oakland ss.

Roy Whims, being first duly sworn, deposes and says that on March 3rd, 1928, A. D., at 11:00 o'clock A. M., he called on Pearl Prentice at her residence at No. 350 West Huron Street, in the City of Pontiac, which is the home of Chauncey Harris, Postmaster, in company with Harry B. Cole and Willis T. Gridley, and engaged in a conversation with Pearl Prentice. Your deponent told said Pearl Prentice he had a farm at Otisville, Michigan, which he wanted to trade for city property, which is true. That the following is the substance of the conversation that took place at that time in the presence of said Harry B. Cole and Willis T. Gridley:

Your deponent inquired of said Pearl Prentice concerning real estate that she formerly owned on Auburn Avenue at Center Street in the City of Pontiac, Michigan. The said Pearl Prentice said that she had disposed of this real estate in the year 1913, and that at that time she owned it jointly with her mother.

That the said Willis T. Gridley asked the said Pearl Prentice if she owned any real estate in the City of Pontiac, and she said "No." She further said that she and her mother had built a certain house on West Huron Street in the City of Pontiac, Michigan, which was next door to where she lives now, with her mother, but that they had sold this property ten (10) years ago, to a man by the name of Kelly.

Mr. Gridley then asked if she owned any real estate and paid taxes on the same, any where, and she said "No."

Mr. Gridley then asked her if she paid any taxes whatsoever, and she said "No."

Mr. Gridley then said, "You are fortunate that you do not have to pay taxes," and Pearl Prentice, replied, "Yes."

And further deponent says not.

Roy Whims

Subscribed and sworn to before me this third day of March, A. D. 1928.

Ralph T. Keeling
Notary Public, Oakland County,
(Notarial Seal) My Commission expires Jan. 5, 1932.

State of Michigan, County of Wayne, ss.

Edith A. Warn being first duly sworn deposes and says:

That she resides in the City of Pontiac, State of Michigan, and has so resided for the last thirty four years.

That your deponent attended at the Post Office on January 25th, 1928, when two of the members of the Advocates

of Justice for the Descendants of Anneke Jans Bogardus, of which organization she is a member, were summoned to testify before the Grand Jury.

That your deponent on said occasion saw one Pearl Prentice whom your deponent has known for at least twenty five years, come down over the steps from a room which your deponent afterwards learned was the Grand Jury room. That at the time the said Pearl Prentice came out of the room the two members of the organization had not yet testified. Your deponent understands that the said Grand Jury had been hearing some other matter.

Within an hour after deponent had seen the said Pearl Prentice leave the said room accompanied by some ladies and gentlemen who had come out of the same room, deponent saw the said Pearl Prentice return, accompanied by a lady and go up the same steps and into the same room into which went the two members of the organization above referred to, and your deponent was given to understand that that was the Grand Jury room.

That shortly after the return of the said Pearl Prentice to the said room Mrs. Susie Brower went into the same room, and during the time said Mrs. Brower was in that room the said Pearl Prentice did not leave it.

Deponent was sitting with Mrs. Maggie Honeywell when Mrs. Brower came out of the Grand Jury room. She passed deponent accompanied by a man whom your deponent was told was the U. S. Postal Inspector and as she passed she said "I did too tell the truth" and repeated "I did too tell the truth" excitedly.

Deponent says that she knows that the said Pearl Prentice resides with the postmaster Chauncey Harris at 350 West Huron Street, Pontiac, Michigan, and has lived there for a number of years.

That after the departure of Mrs. Brower, who was taken by the said U. S. Inspector downstairs, deponent heard someone say "There goes Lizzie now" and Mrs. Matthews went into this same room, and during the time Mrs. Matthews was in the Grand Jury room the same Pearl Prentice did not leave the said room.

Further deponent says not.

Mrs. Edith A. Warn

Subscribed and sworn to before me this fifth day of March A. D. 1928.

Detroit, Mich. Florence R. McGivney
Notary Public,
Wayne County, Michigan

(Notarial Seal) My commission expires May 2, 1931.

State of Michigan, County of Wayne, ss.

Alberta Cole, being first duly sworn deposes and says:

That on January 25th, 1928 she accompanied with several other members of the Advocates of Justice for the Descendants of Anneke Jans Bogardus attended at the Post Office Building where two members of the said organization had been summoned to appear before the Grand Jury.

That several of the members of the above named organization were standing very near to the steps which led to what deponent learned was the Grand Jury room, and among them deponent. That before the two members of the organization went into the said room, several people left the said room and came down over the steps, among them being one Pearl Prentice whom your deponent has known for some time, and knows that she is the sister in law of the postmaster Chauncey Harris of Pontiac, Michigan and resides at his home.

That as the said Pearl Prentice passed your deponent who was about at the foot of the steps leading to the Grand Jury room deponent said "Well that looks good—there's the sister in law of the Postmaster—Pearl Prentice." Deponent said this within the hearing of the said Pearl Prentice, but does not know whether she heard it or not.

That later deponent saw the said Pearl Prentice return to the same room accompanied by others with whom she had left it, and later one of the members summoned Mrs. Brower was called into the said room. That during the time Mrs. Brower was in the said room the said Pearl Prentice did not leave.

When Mrs Brower left the room she was very excited and fairly yelled to Mrs. Matthews "Lizzie they say I lied—they are going to arrest me for perjury *I did tell the truth." The man who was alongside of Mrs. Brower stepped close to her and said "Come on here."

Later deponent saw Mrs. Lizzie Matthews go into the same room, and during the time Mrs. Matthews was in the room the said Pearl Prentice did not leave the said room.

Deponent further says that she has been a resident of Pontiac Michigan for about thirty two years, at least since she was six weeks old.

Deponent says that she is confident that the household of Chauncey Harris was familiar with the subject matter of the present prosecution, for there had been trouble with the mail of the organization coming to your deponent's house which had been reported to the Pontiac Post Office, and also your deponent mailed to the said residence of Chauncey Harris one of the Appeals for Justice sent out by the organization in regard to postal interference.

Further deponent says not.

Alberta Cole

Subscribed and sworn to before me this fifth day of March A. D. 1928.

Detroit, Mich. Florence R. McGivney
Notary Public,
Wayne County, Mich.

(Notarial Seal) My commission expires May 2, 1931.

State of Michigan, County of Wayne, ss.

Maggie R. Honeywell, being first duly sworn, deposes and says, that she is a resident of the City of Pontiac, County of Oakland, State of Michigan, and have resided in the said City for sixteen years last past.

That your deponent attended with a large body of the members of the Advocates of Justice for the Descendants of Anneke Jans Bogardus at the Post Office Building, January 25th, 1928 when two of the members of the said organization were summoned to appear before the Grand Jury.

That on said occasion deponent saw one Pearl Prentice who is a resident of the City of Pontiac, and a sister in law of the Postmaster of said City leave the room in which the two members of the interested organization had been taken, and your deponent immediately called Mrs. Harry B. Cole's attention to the fact that said Pearl Prentice was evidently serving on the Grand Jury.

That your deponent has known the said Pearl Prentice by sight for at least ten years; that she is a member of the Central Methodist of which your deponent is a member.

That when your deponent first saw the said Pearl Prentice leave the said room she understood that the Grand Jury had been hearing another matter for the two members who had

been called before the Grand Jury had not yet testified. That the said Pearl Prentice walked down the corridor accompanied my some other ladies and gentlemen, that when she returned she was accompanied by the same lady. Your deponent watched the said Pearl Prentice go up the stairs and into the same room which deponent saw her leaving, and soon thereafter Mrs. Susie Brower one of the members who had been summoned before the Grand Jury was called into that same room.

That within an hour after she had gone into the Grand Jury room Mrs. Brower came out and seemed to your deponent to be excited. Deponent did not hear what she first said but as she passed your deponent she was accompanied by a man whom your deponent was informed was the Post Office Inspector and she said to him "I did too tell the truth" and then repeated it a second time "I did too tell the truth" and the said man took Mrs. Brower downstairs.

That during the time Mrs. Brower was in the said room your deponent did not see the said Pearl Prentice leave the said room.

Deponent further says that Mrs. Lizzie Matthews was taken into this same room and heard some of the members standing there say "There goes Lizzie now" and your deponent did not see the said Pearl Prentice leave the said room until after Mrs. Matthews left the Grand Jury room; that that was about twelve noon, just before everyone went to lunch.

Further deponent says not.

Maggie R. Honeywell

Subscribed and sworn to before me this fifth day of March, A. D. 1928.

Detroit, Mich.

Florence R. McGivney
Notary Public
My commission expires May 2, 1931.
Wayne County, Mich.

(Notarial Seal)

ORDER DENYING MOTIONS TO QUASH INDICTMENT

(Entered March 6, 1928—By Tuttle, J.)

In this cause defendants' motions to quash having been duly filed and coming on for hearing on this day are argued by counsel for respective parties, and the court being fully advised in the premises do now here order that said motion to quash of defendants be, and they are hereby denied.

ORDER DENYING DEFENDANTS' MOTION THAT SPECIFIC BILL OF PARTICULARS BE FILED AND REQUIRING DEFENDANTS TO PLEAD

(Entered March 6th, 1928, by Tuttle, J.)

In this cause defendants' motions for specific bill of particulars having been filed and coming on for hearing on this day are argued by attorneys for respective parties and the court being fully advised in the premises do now here order that said motions for specific bill of particulars filed by the defendants be, and the same are hereby denied and defendants directed to plead.

PLEA OF DEFENDANT WILLIS T. GRIDLEY

(Entered March 6th, 1929)

The defendant Willis T. Gridley being present in court and being arraigned on the indictment heretofore filed against him, hears the reading thereof, and stands mute, thereupon a plea of not guilty is entered herein as to said defendant under direction of the court. Thereupon the court do now here fix the appearance bond of said defendant at the sum of Ten Thousand Dollars ($10,000.00), together with two good and sufficient sureties, and said defendant Willis T. Gridley is remanded into the custody of the United States Marshal.

PLEA OF DEFENDANT GLADYS WRIGHT

(Entered March 6th, 1929)

The defendant Gladys Wright being present in court and being arraigned on the indictment heretofore filed against her, hears the reading thereof and stands mute, thereupon a plea of not guilty is entered herein as to said defendant under direction of the court. Thereupon the court do now here fix the appearance bond of said defendant at the sum of Ten Thousand Dollars ($10,000.00), together with two good and sufficient sureties, and said defendant Gladys Wright is remanded into custody of the United States Marshal.

MOTION TO QUASH, AFFIDAVITS, NOTICE, ETC.

(Filed December 11, 1928)

Now come the above named respondents, by their attorneys, G. Elmer McArthur, Esq. and Messrs. Dunham & Cholette, and move the court now here that the indictment heretofore and on to-wit the 2nd day of March, A. D. 1928 found and filed in said cause be quashed, dismissed, held for naught and said respondents discharged. This motion is based upon the records and files in said cause, the affidavits hereto attached, the oral testimony which respondents ask permission to adduce in open court and the following reasons:

1. Because the indictment found by said grand jury was returned without any evidence of any kind being presented to said grand jury that the crime therein charged had been committed.

a. The corpus delicti was not established.

b. No evidence was presented to said grand jury that the letters mentioned in said indictment were written by, for, in behalf of or with the knowledge and consent of said respondents.

c. There was no competent proof that said letters were ever received by either of said defendants.

d. There was no competent proof of any of said letters.

e. There was no competent evidence of the mailing of any of said letters.

f. There was no evidence tending to establish that defendants or either of them devised any scheme or artifice to defraud.

g. The evidence adduced by the government was largely immaterial and improperly received for the reason that all of the evidence tending to establish any scheme or artifice related to events transpiring prior to 1923 and thus being barred by the statute of limitations.

h. That the evidence adduced before the grand jury did, therefore, not establish the essential elements of the crime charged in said indictment and therefore did not establish any crime or offense against the United States.

2. Because the indictment aforesaid would not have been found and returned by the grand jury had all of the

material evidence, including documentary evidence in the possession of the assistant district attorney been produced before said grand jury.

a. That the evidence improperly suppressed or concealed from said grand jury shows upon its face that respondents were engaged in a lawful purpose.

b. That the documentary evidence in the possession of the government and which it was the duty of the assistant district attorney to produce would have established the innocence of respondents.

3. The conduct of Gregory H. Fredericks, Assistant District Attorney, in the grand jury room and in the presence of the grand jury was highly prejudicial and resulted in the returning of the indictment against respondents contrary to law and contrary to the fifth amendment to the Constitution of the United States. Said misconduct was intentional and consisted of:

a. Coercing said grand jury into returning said indictment.

b. Permitting the postal inspector, one Walters, to come into the grand jury room at frequent intervals while said grand jury was considering said cause, contrary to the rules of the Court and the statutes governing grand juries.

c. By calling the witness, Susie Brower, "a liar," and "a perjurer" in the presence of the grand jury, telling said witness that she need testify no further; that she was not telling the truth and that she would be locked up for perjury.

d. By calling said postal inspector, Walters, into the grand jury room and requesting said Walters to take said witness, Susie Brower, from the court and lock her up for perjury.

e. Permitting said officers to take said witness out of the grand jury room in his custody and intimating to said grand jury that said Susie Brower had been arrested for perjury.

f. By thereafter intimating and inferring to the grand jury that a few hours behind the bars had made the said Susie Brower "change her tune."

g. By repeatedly stating to the grand jury that the government knew said respondents were guilty; that the government had been after them for a long time as they were frauds and fakers and it was the duty of the grand jury to return an indictment.

h. By showing said grand jury an invitation said Assistant District Attorney Fredericks claimed to have received to a banquet to be given by one of the Bogardus Societies, so called, and commenting upon the same, the cost of it, etc. to the grand jury.

4. Said indictment is fatally defective and must be quashed because:

a. It does not set forth sufficient allegations or facts to establish a prima facia case and upon said evidence the cause could not be submitted to the traverse jury.

b. Said indictment is general, indefinite, vague and not specific enough to advise the accused of the exact nature of the accusations against them.

c. It does not set forth the particulars of any scheme to defraud.

d. It does not set for who, if any one, respondents intended to defraud.

e. It does not show to whom any false or fraudulent representations were made.

f. It does not show what, if any, representations were false or fraudulent.

g. It does not set forth any overt acts of trickery, deception or guilibility.

h. It does not show what associations were consulted, nor when and where said false representations were made to any such associations because the allegations of false representations all relate to future evidence and contingencies rather than to existing facts.

i. Because respondents are entitled to have all of said facts stated in said indictment with sufficient particularity to inform them of the complete nature of the cause so that they might prepare their defense.

j. Because said indictments do not set forth copies of the alleged letters.

k. Because it does not set forth even the substance of said letters.

l. It does not show said letters pertain to the scheme to defraud therein mentioned.

m. It does not show that the letters therein mentioned were mailed or received by respondents in furtherance of such scheme to defraud.

n. It does not show who, if any one, mailed said letters.

o. It does not show or charge that the mailing or receiving of said letters was with fraudulent intent.

p. Said indictment is insufficient in fact and in law.

For the above and foregoing reasons said defendants therefore move this honorable court that said indictment be quashed and dismissed.

G. E. McArthur,
John M. Dunham,
Dunham & Cholette,
Attorneys for Defendants.

CERTIFICATE

I hereby certify that I have principal charge of this cause on behalf of the respondents and that this motion to quash and dismiss in the nature of a demurrer is not interposed for delay and that in my opinion it is well founded.

G. E. McArthur,
John M. Dunham,
Dunham & Cholette,
Attorneys for Respondents.

State of Michigan, County of Wayne, ss.

Thomas Winn, being duly sworn, deposes and says that he resides at 1551 Pingree Avenue, Detroit, Michigan, and that he was a member of the Grand Jury impaneled in the District Court of the United States for the Eastern District of Michigan, and that on, to-wit, the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.

Deponent says further that the presentation of evidence to said Grand Jury was in charge of Gregory H. Fredericks, Esquire, Assistant United States District Attorney; that one Susy Brower was sworn as a witness and during the examination of said Susy Brower, said Gregory H. Fredericks stated to said witness in the presence of the Grand Jury, in substance, "Shut up, you are lying and perjuring yourself" and that a postal inspector named Walters was sent for; that said Walters came into the Grand Jury rooms during the deliberation and removed said Susy Brower from the Grand Jury room.

Deponent says that he gained the impression from other remarks of said Gregory H. Fredericks that the respondent,

Willis T. Gridley, was a faker and a fraud, that people had paid him for writing a book and said Gridley had never delivered the book.

Further deponent say not.

Thomas Winn.

Subscribed and sworn to before me this 27 day of Sept., 1928.

William G. Lee,
(Seal) Notary Public, Wayne Co., Mich.
My commission expires Oct. 11, '29.

State of Michigan, County of Wayne, ss.

Fred J. Whines, being duly sworn, deposes and says that he resides at 5708 Forsyth Street, Detroit, Michigan, and says that he was a member of the Grand Jury impaneled in the District Court of the United States for the Eastern District of Michigan, and that on, to-wit, the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.

Deponent says that during the presentation of evidence before said Grand Jury and while said Grand Jury was deliberating, Gregory H. Fredericks, Assistant United States District Attorney, sent for a man named Walters whom deponent later learned is a postal inspector and had Mrs. Susy Brower, a witness, escorted from the room in the custody of said postal inspector and that deponent received the impression that she had been arrested for perjury and later received the impression that she had changed her testimony.

That he does not recall seeing any letters signed by either of the respondents offered in evidence or presented before said Grand Jury and that the letters upon which the indictment was based were not produced in evidence before said Grand Jury.

Further deponent says not.

Fred J. Whines.

Subscribed and sworn to before me this 30 day of Sept. A. D., 1928.

William G. Lee,
(Seal) Notary Public, Wayne Co., Mich.
My commission expires Oct. 11, '29.

State of Michigan, County of Macomb, ss.

Edward H. Lefevre, being duly sworn, deposes and says that he at present is a resident of Rural Route No. 3 Mount Clemens, Michigan, and that he was a member of the Grand Jury impaneled in the District Court of the United States for the Eastern District of Michigan, and that on, to-wit, the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.

Deponent says further that while one Susy Brower was on the witness stand Gregory H. Fredericks, Assistant United States District Attorney did so in the presence of Said Grand Jury, state to Mrs. Brower that she was a liar and was perjuring herself and the said Fredericks did call a man whom deponent later found out to be postal inspector Walters and did request said Walters to take said Susy Brower out of the jury room although he does not recall that said Fredericks told the inspector to lock her up.

Deponent says further that a large amount of evidence was submitted to said Grand Jury but that no letters signed by the respondent, Gridley, were produced in evidence nor were the letters produced upon which the indictment was based.

Further deponent says not.

Edward H. LeFevre.

Subscribed and sworn to before me this 10th day of Oct., 1928.

Philip G. Whiting,
(Seal) Notary Public, Macomb County, Mich.
My commission expires Jan. 5, 1930.

State of Michigan, County of Wayne, ss.

Bernard Wendell being duly sworn deposes and says that he resides at 6157 Fisher Avenue, Detroit, Michigan, and says that he was a member of the Grand Jury impaneled in the District Court of the United States for the Eastern District of Michigan, and that on, to-wit, the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.

Deponent says that during the presentation of evidence before said Grand Jury and while said Grand Jury was deliberating, Gregory H. Fredericks, Assistant United States Attorney of the District, did while one Susy Brower was on the witness stand, did so in the presence of the Grand Jury state to Mrs. Brower that she was a liar and was perjuring herself.

Deponent says further that a large amount of evidence was submitted to Grand Jury but that no letters signed by the respondent, Gridley, were produced nor were the letters produced upon which the indictment was based.

Further the deponent say not.

Bernard Wendell.

Subscribed and sworn to before me this 1st day of December, 1928.

William G. Lee,
(Seal) Notary Public, Wayne Co., Mich.
My commission expires Oct. 11, '29.

United States of America, State of Michigan, County of Wayne, ss.

Susie Brower, being first duly sworn deposes and says; that she resides in the City of Detroit, County and State aforesaid.

That she was summoned to appear before the Grand Jury in the Post Office Building January 25th, 1928, in the above matter.

That upon leaving the Grand Jury room on said day your deponent was somewhat excitedly talking, and called to Mrs. Lizzie Matthews that they had said she lied; that she had perjured herself; that she was to be arrested for perjury, and your deponent added that she had told nothing but the truth. That in making these statements deponent referred to United States District Attorney Fredericks; that it was Fredericks who made these threats to your deponent.

That deponent was taken downstairs by the P. O. Inspector Walter. That after entering what your deponent has since learned was the said Frederick's office your deponent asked the said P. O. Inspector to come and talk to her. The said Walter stated to your deponent that he had often thought he would like to talk to your deponent. Your deponent told the said Walter that she had several things she would like to show him. The said Walter told your deponent that he usually went out alone, and that in the

case of interested people he might be misquoted. The said Walter asked deponent if she attended the Gull Lake picnic, and deponent said that she had not because her father was dying at that time. The said Walter then told your deponent that he had attended the said picnic and that when there he had heard Mr. Gridley state that he could solve adverse possession. The said Walter then asked your deponent if she had not heard Mr. Gridley say that, and deponent answered that she had not heard Mr. Gridley make any such statements.

The said Walter then asked deponent if she had not mailed out circulars, and deponent told him no, that she did little mailing; that when she had consented to take care of the books for the Detroit society she was not supposed to do any writing, for she did not have the time on account of a sick child; then too she lived out of the express delivery zone, and it cost extra to send things to her. The said Walter then asked who usually received these things, and deponent told the said Walter Mr. Page, Mr. Drew and Mrs. Brown she guessed, but that she did not exactly know.

Deponent then showed the said Walter two letters which had come back to her with her name signed to them, and told the said Walter that she had not written those letters, and that she had no idea haw many other letters had been written and her name signed to the same. Mr. Walter asked deponent who had written the said letters, and deponent said she believed Mr. Page had written them.

Deponent then showed Mr. Walter the resolutions that were passed in November, 1924, and told the said Walter that she was responsible for those resolutions as she had foolishly sent out a letter repeating things she had heard Mr. Page say; that I had understood the contents of the book would immediately reinstate Mr. Gridley and that if we needed an legal adviser Mr. Gridley could act. That this had displeased Mr. Gridley very much, and that the resolutions followed.

Deponent then showed Mr. Walter the copy of the speech given by Ethan A. Ennest at Flint, May 11, 1926, and called the said Walter's attention to the various statements therein having to do with Mr. Gridley and the work. Deponent told the said Walter that she had been given to understand that the stenographer who took that speech was from the prosecuting attorney's office.

Deponent called Walter's attention to the letter sent out by Ennest June 14th, 1926, and told him how this meeting had been rebuked by the society.

Deponent told Walter that Ennest posed as a doctor, and that he signed his name as such; that Ennest had acknowledged his signature to the questionnaire; that it was his writing, and deponent showed the said Walter how the signatures corresponded.

Deponent showed the said Walter what Ennest had said about the book in the said speech above referred to, and told him about the terrible meeting that was held in response to the letter calling for the June 14th, 1926, meeting.

Deponent also called Walter's attention to statements made by Ennest which had proved false. That at one time he had told about a lady in Chicago corresponding with the Queen of Holland, and he said that the Queen had answered that she wished the heirs in the United States of America would organize and claim the money belonging to them in Holland. That how Mrs. Rupp on coming to the meeting and hearing the story had mailed to her a check for six memberships; that this same lady called your deponent on the phone and asked to get a copy of the letter of which she had heard the said Ennest speak at the meeting. Deponent replied that this lady, whose name was Mrs. Rupp, could get a copy of the letter better than anyone else because the said Ennest had said the correspondent was her, Mrs. Rupp's sister. Mrs. Rupp immediately denied this to your deponent, and said there was no truth in it. Deponent told all this to the said Walter, and further that at the next meeting of the Detroit society someone asked if Mr. Ennest had a copy of the letter, whereupon your deponent had arisen and explained the matter to the members, telling them it was not true. That your deponent did not hear a further repetition of said story by Ennest.

Deponent further told Mr. Walter that she had asked Mr. Page where he got all the stories that he told in regard to the matter, and asked him if he could prove one tenth of the stories he told, and that the said Page had answered that he had heard those stories since he was a boy.

Deponent told the said Walter how John C. Price, the ex-treasurer of the Detroit Society had phoned her in and about December, 1926, and called her with her husband to his house to a business meeting. That at the said meeting was Messrs. Drew, Page and Price. That they told me that they had all three decided to pay Ennest the $50.00 he was claiming with interest out of their pocket, providing I would in some way after about six months, or after everything was quieted down put an order through the society so that they could get their money back. They had already tried to do this in the Detroit Society, but had failed. Deponent told the said Walter that she had refused to do this, because it was dishonest.

Deponent told the said Walter how she kept the records and books of the society; that I receipted for all money; that then Mr. Price took the money and gave me a receipt for the same; that then in order to pay out that money Mr. Price got a warrant signed by myself and the President.

Deponent told Mr. Walter about the withholding of the Detroit Society Funds by Ennest, and how the prosecuting attorney had told the said Price that he was withholding the money illegally, and that he was committing a crime in so doing.

Mr. Walker asked your deponent how much money the Detroit society had sent the said Gridley, and deponent told the said Walter how Price and Ennest had sworn according to the records in the recorder's court that between 12,000 and 13,000 dollars had been sent; that I had looked it up and found that about half that amount had been sent in.

Deponent further states that the said Walter said to her that there was a tendency to hold the secretary responsible, whereupon deponent said she could not see how, that she had worked under the orders of her superior officers and the resolutions passed by the society.

The said Inspector asked why deponent did not come to see the Post Office Inspector when he sent for her (referring to a letter deponent had received from the Inspection service). Deponent told the said Walter that she did not want to see the inspector without all the facts and proofs, and secondly she did not want the same treatment which had been accorded to Mrs. Hibbard at Omaha; that she had asked her attorney to find out for her what was required, and not hearing from her attorney she went to see him, and he told her not to go until he advised her to go.

Deponent told the said Walter that when she was served with the summons to appear before the Grand Jury she showed it to her attorney, and he told her to go and tell the truth, and that she assured the said Walter that was what she was doing.

Deponent says that the said Walter told her that those papers had nothing to do with this matter that they did

not interest them, and your deponent answered that nothing seemed to interest them that they had to show.

Your deponent showed the said Walter the pledge and the questionnaire, as well as the Advance book subscription, and the notation on the back thereof.

Your deponent asked the said Walter why the Post Office picked on this organization that Wykoff had written a book in regard to this matter; that he talked of suits and settlements, and collected money through the mail for such through the paper or magazine that they published, that no one seemed to disturb them.

Your deponent further told the said P. O. Inspector Walter that Ethan A. Ennest talked suit and settlement, and asked the said Walter if he had seen Ennest's letterhead that Ennest was State Governor for Harlem and Anneke Jans Bogardus Estate, and deponent asked the said Walter how Ennest could collect money in this manner without molestation. Deponent told the said Walter that she had not attended any of the meetings held by the said Ennest, but that others had told her of them, and had made sworn statements to this effect. Deponent also mentioned the Edwards estate matter that such an estate did not seem to exist, and yet they appeared to be promising settlement and the like.

Mr. Walter answered your deponent that at the present time the Edwards estate matter was lying dead in the file, and that he knew but little about the Wykoff estate. As regards Ennest the said Walter merely said they would get to him sometime, or that in substance.

Deponent asked the said Walter if he did not think it strange that previous to the time Mr. Page went to New York that he, the said Page had claimed he was a poor man, and had to work to support his family, and that according to reports Mr. Page did not have to work steady now. The said Walters asked deponent show she accounted for it, and did she think Mr. Page's trip to New York had anything to do with it. Deponent told him he could draw his own conclusions.

Deponent told the said Walter about Price and Ennest swearing out a bill of complaint, and how there was not one word of truth in it.

The said Walter spoke of the Appeal to Justice and said it showed nothing, and that the person who received the letters would have to appear and swear to it together with the letters.

The said Walter asked your deponent if she thought the book would get the New York property, and deponent said no that the Browers were vitally interested in getting the book from a curiosity standpoint.

Mr. Walter gave deponent to understand that even though Mr. Gridley said to forget suits, settlements and the like that Mr. Gridley knew it was talked of, and allowed it to go on. Deponent told him he was wrong that she had heard Mrs. Wright tell Mrs. Matthews to be sure she was right about everything before she told it.

Deponent told the said Walter that there was a plan on foot to move Mr. Gridley to Michigan, and the said Walter said that was another scheme to get more money, and deponent told the said Walter that he was wrong that Mr. Gridley had nothing to do with it.

I told them that I had told the truth and that if 10,000 stand up and say I had not that I would still stick to the right even if they cut my hands off. Mr. Walter said he believe I meant right. Mr. Fredericks told me the same, but said he thought Mr. Gridley had me hypnotized. Deponent asked the said Fredericks what object either Mrs. Matthews or herself would have in misrepresenting things, and the said Fredericks said he thought deponent meant alright, but that he thought Mrs. Matthews was lying to him.

Deponent told the said Fredericks that she wished he could talk to Mr. Roen, or Mr. Hatt, or some of the others in the hall way, and that he would not think them dupes or fools.

Deponent further says that the said Fredericks read a portion of a paper he had in his files. It said that the first 1,000 books, or the money from them, was to be used for suit and settlement. Deponent told him that it might be like the paper Mrs. Taylor and Mr. Pearce had that the Mrs. Anderson and Mr. Pearce whose names were signed to that paper were not aware of the circular, and that Mrs Anderson was not a member at that time. This paper gave Mrs. Tomkins name on the committee and said for further information phone Mrs. Tomkins and the phone number was given.

Deponent further states that the P. O. Inspector Walter said that the investigation started in Florida. He said that Mrs. Matthews and deponent partly caused the investigation; that I did not go to see the Inspector when he sent for me, and that Mrs. Matthews had sent out the letter of warning to the members in regard to the P. O. Inspector Killian letter.

Deponent says that said Fredericks talked very ugly for the most part, and that when he brought Mrs. Matthews from the Grand Jury room he took her into another room from the one in which deponent was sitting, and deponent says that she did not understand that government officials were allowed to treat witnesses in the manner in which the said Fredericks did.

Deponent says she further told the said Walter that her mail had been tampered with, and that even the mail carrier had noticed it that there would be no mail for two or three days, and then would come a box full.

Further deponent says not.

Susie Brower.

Subscribed and sworn to before me this 15th day of March, A. D. 1928.

Florence R. McGivney,
Notary Public, Detroit, Wayne County, Michigan.
My commission expires May 2, 1931.
(Notarial Seal)

United States of America, State of Michigan, County of Wayne, ss.

Lizzie Matthews, being first duly sworn deposes and says that she is a resident of Ann Arbor, State of Michigan.

That she is President of the Ann Arbor Unit of the Order of the Advocates of Justice for the Descendants of Anneke Jans Bogardus.

That on January 26th, 1928, she was summoned to appear before the Grand Jury at the Post Office Building in Detroit, Michigan, to testify in the above matter.

Deponent says that while standing in the corridor of the said building, and near to the Grand Jury room, Mrs. Susie Brower, who had also been summoned to appear before the Grand Jury in connection with this matter, came out of the room and excitedly exclaimed to your deponent "Oh Lizzie! They say I lied! That I perjured myself! I am to be arrested for perjury, and I never did. I told the truth and nothing but the truth!"

Deponent told the said Susie Brower to keep still, whereupon the Assistant United States District Attorney, Greg-

ory H. Fredericks, told Post Office Inspector Walter, who was standing there to "Take her away! Take her downstairs!"

The said Post Office Inspector took Mrs. Brower down stairs.

Deponent was then taken into the Grand Jury room, and was there sworn not to divulge what was said and done while she was in that room.

Deponent states that she was not sworn not to divulge what was said and done outside of the jury room, and the following occurred after she left the Grand Jury room.

Deponent states that the said Gregory H. Fredericks took her downstairs to a place which she supposes is his office. That when he got her there he called her a "Liar," and stated that in his opinion both Mrs. Brower and I had perjured ourselves, and that he believed the Grand Jury thought so too. Deponent told him "Is that so—I am glad to know that—that is something I did not know before." The said Fredericks then said that he did not have the say about it; that Mr. Smith his boss had the say as to what would be done, but that he would recommend that the Grand Jury have both Mrs. Brower and I arrested for perjury. Deponent told the said Frederick to do that very thing; that that was his privilege, but that if he did then she would have her day, and to this the said Fredericks made no answer.

Deponent further states that during the time she was in the said Frederick's office he called her a liar many times, and said he would have her arrested for perjury.

Deponent says that after some deliberation the said Fredericks said to your deponent and Mrs. Brower "If I allow you two to leave the building for dinner, will you come back at two P. M.?" Mrs. Brower answered that of course, she would, and deponent told him that she would certainly come back if that was what he wanted. Fredericks then said in an arrogant manner that it was out of the regular order of things to let us go, but that if we promised to come back, it would be all right he guessed. We then left the office.

Deponent and Mrs. Brower returned at two P. M. When Mr. Fredericks arrived he told us that he had not been able to get a line on Mr. Smith, who was the boss, and that he did not know what to do.

Inspector Walter then started to question Deponent. He asked deponent if she had heard Mr. Gridley state that he intended the book would get the Bogardus Farm for us. Deponent told him "No" that she had never heard Mr. Gridley make any such statement. The said Walter told your deponent that he had. Deponent told the said Walter that she had been in this work since April 1924 and that she had never heard Mr. Gridley say anything of the kind; that he had heard more than she had heard. Deponent told the said Walter that she had been many places with both Mr. Gridley and Mrs. Wright and that she was sure that if any such statement was made she would have heard it in the many times she had heard them both talk to the members and others. Further your deponent told the said Walter that it had always been clearly understood by all the members that we were to forget suits, settlements and the like; that the book was to give the descendants and the public first, knowledge, second a fund, and lastly public opinion. That these were the three things we expected our book would accomplish for us; that we intended to capitalize our family history—a right we felt was ours.

Deponent further states that this said Walter inferred that we had started our organization with no such purpose, whereupon deponent told him that he was much mistaken; that those were our original plans, and that they had never been changed. Mr. Walter came back to this point again and again, only in a round about manner and from different angles insisting that the plans were changed after the organization had started.

Mrs. Brower and deponent were then excused and told to return to that office at 3 o'clock. Mrs. Brower said she did not think it would be worth while to go, but deponent told her there was no use sitting there and breathing in all the cigarette smoke, as the said Fredericks had kept smoking incessantly.

Deponent and Mrs. Brower went out into the corridor of the building where there were many of our members assembled from the various cities and towns in Michigan, waiting to see what was going to happen to Mrs. Brower and deponent. We returned to the said Fredericks office at three o'clock.

Immediately upon our return to the office the said Fredericks started to attack what deponent had said before the Grand Jury, and asked deponent if she was going to stick to that ridiculous story. Deponent said she certainly was. Said Fredericks told your deponent that he gave her credit for more intelligence than that. Deponent asked what he meant; did he mean that she was a fool for believing in the plans and purposes of the organization. Fredericks answered that he was not questioning deponent's intelligence but rather the fact that deponent should think anyone believed her. Deponent told Fredericks that it was her business to believe as she choosed; that she had a right to her own opinion. Fredericks said that he also had a right to his opinion. Deponent told him she was not interfering with his opinion, but that he was interfering with hers.

Fredericks then said to your deponent "Now remember I did not call you a fool!" Deponent told the said Fredericks that if the rest of the organization were fools she certainly was one of the biggest. Fredericks answered "Oh no! Neither you nor Gridley are fools—you are in on it!" Deponent asked him what he meant by that, and he said "In on the split." Deponent asked him what he meant by that and he said "In on the dough." Deponent told the said Fredericks that was another term she was not familiar with, and he said petulantly that deponent knew what he meant that she was in on a commission basis; that deponent was getting a percentage of the moneys taken in by the organization. Deponent then made it plain to the said Fredericks that no one connected with the organization was receiving any money for their services, or any salary, with the exception of Mrs. Wright, the organization secretary; that she was receiving $50 a week, and that deponent did not believe anyone wanted to take her place for that salary. Deponent added that all of the members as well as the officers expected to get a dividend from the sale of the book when it was on the market.

Deponent states that it was plainly said Fredericks object to make deponent change her testimony if he could; that he continually called deponent a liar; said that he did not believe it was possible to get together such an organization on such a flimsy plan. Deponent told the said Fredericks that the fact remained that "we had got them." Whereupon the said Fredericks said, "Oh yes, you got them all right." Deponent told the said Fredericks that it was evident from the accent that we did not mean the same thing; that what deponent had in mind was that he had an organization built on those very plans which he called "flimsy." Fredericks told deponent that he did not believe her, and that he did not think the Grand Jury be-

lieved her either; that there was something deponent was keeping back. Deponent asked the said Fredericks why we would want to keep anything back; that there was nothing to keep back; that we had been open and above board. Fredericks then made this remark "Well we did not get what we wanted." Deponent asked him what he wanted, but he made no answer.

Fredericks then went out of the room, and Mr. Walter started to talk to me. He told me that I was to blame for the antagonism of the Post Office Officials. Deponent asked him why, and he said that I had sent out warnings for my members not to answer the S. J. Killian letter, but had told them to send the letters to me or to their officers. Deponent explained that she thought it was her place to do that; to answer the letter herself, and thus save the expense of so many answers. Deponent asked the said Walter if he called that a letter sent out by Killian; that she would call it a mimeographed or multigraph mess; that it did not seem to matter just when it was sent out, whether in March, April, May or June, they all had the same date on them, March 9th, 1927. Deponent says that the said Walter gave your deponent to understand that the feeling was that we had interferred with the postal inspection work; that that was why the Post Office Officials were antagnostic to us. Deponent asked the said Fredericks whether the government officials had any right to exhibit spleen and that from his talk to deponent it would seem that they were exhibiting it.

Deponent states that at this point the said Fredericks returned. He started calling your deponent a liar, and then deponent got angry and told the said Fredericks that he was the most insulting man she had ever talked to; that she did not believe he had any right to talk to her in that manner. He shrugged his shoulders and asked deponent "Why not." Deponent told the said Fredericks that she considered he was using the cheapest kind of third degree methods, and that she did not think it was necessary.

Deponent further states that during the said interview the said Fredericks called Mr. Gridley a fraud, and said that he was like P. T. Barnum; that Barnum was a circus man; that long after he left the show business he was getting money off those doing the work. Deponent told Fredericks that she knew nothing of Barnum's arrangements with his successors, but if they were pleased with them she did not consider it any of her business; that she did not think that had anything to do with the organization. The said Fredericks said "You know Barnum said there was a fool born every minute" and deponent told him that was not what Barnum said, but this reference to Barnum was made at different times.

There had been a reference made to one hundred per cent members, and Fredericks asked deponent what she had meant by one hundred per cent members. Deponent answered that it was what was usually meant, members fully paid up in all obligations in any society, organization or lodge. Deponent said that was the usual meaning. Said Fredericks said "Oh you mean a satisfied member." Deponent answered that as a rule fully paid up members were satisfied, and the said Fredericks answered that if deponent thought all our people were satisfied she was much mistaken; that they were not all satisfied. Deponent answered the said Fredericks that she was not so foolish as to think anyone could fully satisfy two to three thousand people, even though they were fully paid up; that Christ had twelve disciples, and one of them was a Judas; that no one could expect more from deponent or Mr. Gridley than you could from Christ. The said Fredericks turned angrily on deponent and said "We're not discussing Christ" whereupon deponent said "No I believe you are right—He does not exist in your category—He is entirely left out by the looks of things."

Deponent informed the said Fredericks of how Ethan A. Ennest had lied on the witness stand in the suits that he had brought, and the said Fredericks answered that that had no bearing on this matter. Mrs. Brower then said that no matter what we said it had no bearing on the present situation. Deponent told him that she thought it had quite a bearing on our matter, for we felt that Ennest and his people were responsible for the situation with the Post Office, and for the suits brought against the Detroit Society in the Justice Court. Both Fredericks and Inspector Walter said they did not know or care anything about that.

Deponent further states that it is impossible to put into words the extent of the vindictiveness, venom, anger and threatening attitude of this man Fredericks. Deponent says that he was in no condition to examine deponent in this matter because of this attitude, which plainly showed his mind was made up. Deponent says that Fredericks' whole attitude showed that he was bent on trying to frighten her into saying what he wanted, and failing to do that, used the terms "Liar" and other like words, and assumed mostly a threatening manner towards her.

Further deponent says not.

Lizzie Matthews.

Subscribed and sworn to before me this 19th day of March, A. D. 1928.

Florence R. McGivney,
Notary Public, Detroit, Wayne County, Michigan.
My commission expires May 2nd, 1931.
(Notarial Seal)

County of Eaton, ss:

Willis T. Gridley, being duly sworn, deposes and says:

1. That he is one of the defendants above named and makes this affidavit in support of a motion to quash the indictment returned in said cause, said motion being annexed hereto.

2. That sometime early in 1927 he learned that an investigation was being made by the Department of Justice of deponent's work and efforts towards the publication of a book relating the history of the Anneke Jans Bogardus controversy, so-called, and later learned that on the 2nd day of March, 1928, an indictment was returned and filed by the grand jury impaneled for the November term of said court, reference to which is hereby prayed, in which indictment deponent and one Gladys Wright were jointly charged in six counts with using the United States mails to defraud; that thereafter and on or about the 6th day of March, 1928, said defendants were arraigned in said court, Honorable Arthur J. Tuttle, District Judge presiding; that at that time deponent had not seen the indictment and refused to plead to the same, after having heard it hurriedly read over in open court; that to protect and preserve their rights deponent and said Gladys Wright stood mute, and a plea of not guilty was entered by direction of the court, after which defendants were released upon bail in the sum of $10,000 each. Deponent herewith attaches a stenographic record of the proceedings had on the 6th day of March, 1928, marked exhibit A for identification.

3. That prior to that time, deponent, for reasons hereinafter set forth, had been endeavoring to obtain informa-

tion relative to the grand jury proceedings, and because of certain information reaching him as to the make up of the said grand jury, deponent endeavored to obtain a list of the names of the Grand Jurors, but was advised, as were other people who made inquiry, that said names could not be obtained until after the discharge and dismissal of the entire grand jury as is also shown by the affidavit of Louis Andrejewski hereto attached.

4. That following the arraignment information reached deponent that some of the members of the grand jury were disqualified for divers reasons, i.e., professional jurors, lack of good reputation, not on the assessment roll, request to be placed on the grand jury through political friends, all of which is in violation of the constitutional guaranties afforded an accused, and in violation of the statutes in such case made and provided, and all of which led deponent to believe as he still believes that the entire matter before them relative to the actions of deponent could not and did not receive the fair unbiased judgment of some of the grand jurors.

5. That later deponent made further futile effort to obtain the list of the said grand jury, as is more particularly shown by the affidavit of Frank L. Pearce attached hereto.

6. That just prior to the entry of a plea by the court as set forth, counsel for said defendants filed in said cause a motion to quash the indictment, reference to the same being hereby prayed; that said motion was based upon lack of qualifications of a certain member of the grand jury who had not been qualified to act as a grand juror for upwards of ten years; that said motion was denied, an appeal was taken, and later, and on or about the 4th day of June, 1928, said appeal was withdrawn, and a stipulation was entered into between the United States District Attorney and counsel for the said defendants continuing the trial of said cause over to the October term of said court.

7. That during the summer of 1928, deponent first had the time and opportunity to investigate, and cause an investigation to be made of the circumstances surrounding the returning of the said indictment by said grand jury, and learned that in some cases certain witnesses were not interrogated by the Assistant United States District Attorney upon many matters vital and material to the real issue; and deponent charges upon information and belief that a large mass of testimony in the possession of the United States District Attorney's office, part of which was documentary, was not placed before the grand jury; that on the other hand a large amount of incompetent, immaterial and irrelevant testimony was submitted to the said grand jury, all of which was done as deponent believes, and so charges, for the deliberate purpose of presenting a one-sided view of the case in order to create bias and prejudice upon the part of the grand jury, and secure the returning of an indictment against deponent and said Gladys Wright; that in some cases information which would have been favorable to defendants and would have shown affirmatively that they were not engaged in the work and the misconduct charged by the government was not put before the grand jury; and if allowed to testify upon the hearing of this motion deponent can and will give further detailed information.

8. That deponent has been informed and believes and so charges upon information and belief that certain documentary evidence was placed before the grand jury in question, but that no letters signed by either of said defendants, and no letters addressed to them and received by them were placed before said grand jury so that there was a total failure upon the part of the government to prove or establish the corpus delicti.

9. That as deponent has been informed, certain documents were placed in the hands of Assistant District Attorney, Gregory H. Fredericks, in charge of said cause for the government, see affidavit of Frank L. Pearce attached; that one of said papers or documents was what is known as the "Questionnaire" and another known as the "Pledge"; and another the advance book, subscriptions, and still another called stock-taking; that one witness on behalf of the government, Hannah Grow Lutz, of Philadelphia, Pennsylvania, who was subpoenaed and sworn as a witness by the government, gave evidence before the said grand jury, that said Hannah Grow Lutz had herself signed one of said questionnaires, a copy of the same being attached hereto and marked exhibit B; that another witness on behalf of the Government, Dr. E. A. Ennest, had signed such a questionnaire, a copy of the document signed being attached hereto and marked exhibit C, and that deponent is advised and believes and so charges upon information and belief, that said documents, viz, questionnaires or similar ones were in the hands of the Assistant District Attorney but were not presented to the grand jury and that said questionnaire shows upon its face that deponent was doing work simply upon said book and that said witnesses so knew and understood his work.

10. That on information and belief the members of said societies had signed another document which has been known as and is termed the "pledge," a copy of the same being attached hereto and marked exhibit D; that it is a fact that aside from government officials, investigators and operatives, only three witnesses were sworn before said grand jury, who had not signed the questionnaire and the pledge; that said witnesses were Messrs. Roat, Jones and Lucking and said witnesses were not members of the organization interested in publishing said book and had never contributed anything thereto; that all of the witnesses, therefore, who knew of the direct work of the defendants knew and realized that this deponent has not acted nor pretended to act as an attorney for many years, knew and realized that deponent had nothing to do with any suits in the past over this subject matter and would have nothing to do with any suits, settlements or proceedings of any kind and that his entire efforts have been and were being devoted to the completing of historical information, study, research and other work in connection with the writing and publishing of said book, all of which appears by resolutions passed at regular meetings of the societies in Detroit, Philadelphia and Ann Arbor, copies of which deponent charges upon information and belief to have been put into the hands of the Assistant District Attorney and which he will produce upon the hearing of this motion.

11. That other information, some of it documentary evidence, consisting of other records of various Societies so-called, together with correspondence, was put into the possession of said District Attorney but none of the documentary evidence above mentioned and none of the evidence establishing the innocence of the said defendants was put before the Grand Jury; that said Assistant District Attorney in charge of this matter for the government had full knowledge that there was some thousand or more active members of said organization in Michigan at that time; that none of the members of said organization who were cognizant of all of the facts were called as witnesses, that had any such witnesses been called it would have been established beyond question that every dollar that has been

raised by said organization has been raised with a view of carrying out their contract with deponent for the writing and publishing of the book in question and that said Assistant District Attorney failed to call for or present any communications, receipts and vouchers showing the payment of money on behalf of said organization, all of which would have established that not one dollar has been raised by this organization or spent by it with a view of making any claim to any New York property or starting any litigation in connection therewith.

12. That a number of witnesses called by the government, viz, E. A. Ennest, John W. Page, William Drew, John C. Price, W. J. Tomkins, Hannah G. Lutz, et al, were active in the organization work, secured signatures of prospective members to the pledge and questionnaire, which as above set forth, are declaratory of the aims and purposes and the contractural relations eixsting with deponent. The said parties also sold many advance book subscriptions for their particular Societies; that said grand jury was given to understand that said advance book subscriptions were made to deponent, when as a matter of fact, had the form in question been presented in evidence, or had said witnesses been interrogated upon all of the facts; it would conclusively appear that the organization members subscribed for and agreed to purchase their book from their own organization, and therefore deponent charges upon information and belief that only a portion of the facts pertaining to this action were put before said grand jury.

13. That shortly after the filing of said indictment deponent was told by certain witnesses, as appears by the affidavits of Mrs. Brower and Mrs. Matthews, which are made a part hereof, who appeared and gave evidence before said grand jury of certain proceedings, which had taken place in the presence of said grand jury and deponent was led to believe and hence charges upon such information and belief, that said Assistant District Attorney was guilty not only of unethical conduct, but of misconduct so prejudicial in its nature as to vitiate all of the proceedings of said grand jury; that he has been advised further that the secrecy of the grand jury room had been violated and he is advised by his counsel which advice he varily believes, that the conduct of said Assistant District Attorney in his attitude towards certain witnesses, the language used towards them and his characterization of them in the presence of said grand jury, the prejudicial and biased remarks, statements, conclusions and arguments made by said Assistant District Attorney as well as the calling into said grand jury room during the deliberations of said grand jury of a postal inspector named Walters, were such violations of the practice as provided by statute and rule of court, and the constitutional guarantees and rights of deponent had been so violated as to make it deponent's duty to file a motion to quash such proceedings.

14. That in order to verify the information so given him by various witnesses, deponent further, during the past few months, has caused an investigation to be made and has procured from certain members of the grand jury several affidavits, three of which are hereto attached, but if the court should desire oral testimony to be taken in support of said motion, many of said grand jurors can and will be subpoenaed and they will give evidence in support of this motion and will corroborate the allegations made in the affidavits, hereto attached; that from said investigation deponent believes that the indictment in question was returned through the concealment from said grand jury of a large portion of the evidence, viz, the real facts and the use or misuse before said grand jury of a large amount of evidence which said Assistant District Attorney must have known as immaterial, irrelevant and incompetent, having taken place, if at all, many years ago and being barred by the Statute of Limitations; that the witnesses from Wilkes-Barre, Pennsylvania, could testify and deponent is advised that they did testify before said grand jury only as to matters happening largely in the year 1922; that in September, 1923, deponent resigned from the organization to which such witnesses belonged and refused longer to have anything to do with them and he has had no relations with them in person, by correspondence, directly or indirectly, since that year; that said indictment was procured further by the misconduct of said Assistant District Attorney, as set forth in the motion, and other supporting affidavits hereto annexed; and that it was procured further without any evidence establishing or tending to establish certain of the material and essential elements of the crime charged in that the letters in question were not produced before said grand jury nor was there produced proper proof of the mailing of such letters with knowledge upon the part of defendants.

15. Deponent says further that he has never handled any law suits for the Bogardus descendants and that deponent entirely withdrew from any connection with the Bogardus descendants or Local Societies, so-called, about the latter part of 1916 and that he went into the manufacturing business in the City of New York, remaining in said business for a period of upwards of five years; that at that time, later in 1922, he was requested by numerous representatives of Bogardus Societies to give them the benefit of his knowledge of the Bogardus family, its early litigation and the history of the passing out of the title to the old Bogardus farm as he knew it; that deponent finally consented to publish such a book and that a plan was worked out and accepted by the various Societies; that in the year 1923 thereafter, deponent learned that certain officers of said organization in Wilkes-Barre, Pennsylvania, used his name as an attorney and were collecting money under promise of suit for which reason among others deponent immediately resigned his connection with said organization; that he was requested to and did reconsider the matter but later did sever his relations with said organization, a copy of his resignation being attached hereto and marked exhibit E; that said letter shows upon its face that deponent did not pretend to be an attorney, had not been interested in any law suits of any kind, had not been using the mails to defraud or for any unlawful purpose but had been carrying out his employment by said order, namely, the drafting of the history of Anheke Jans Bogardus' family litigation, etc., and otherwise complying with the resolutions Exhibit F and expressed wishes of said order.

16. That thereafter deponent was beseeched by many interested parties to take up his employment again and to write said history as he had more information upon it, they believed, than any other person; that deponent told all of said parties that any further connection of his would have to be upon a different basis and it must be thoroughly understood by everyone that deponent was employed simply to write a book; that a new organization was thereupon formed, following which the pledge and the questionnaire hereinbefore mentioned were drafted and every member of said new organization signed a pledge and questionnaire; that the matter was put squarely to the members of the new organization and they all understood by signing said papers that they were contributing simply to the writing and publishing of a historical book; that some of the witnesses who appeared before said grand jury and gave evi-

dence against deponent were not members of this new organization but belong to the old organization which continues to raise money to defray the expense of litigation over the Bogardus estate, so-called; that their methods have been exposed by the new organization and their bitterness and antagonism is the result of criticism of such methods by the new organization; that all of the documents above mentioned and all of the evidence in question was in the possession of the Assistant District Attorney and the Department of Justice but was not used nor placed before the grand jury as evidence and the indictment of said defendants was obtained therefore by using only a small portion of the evidence in their possession and a portion which did not give nor tend to give the real facts in the case.

17. Deponent says further that he would welcome the most full, complete and fair investigation of the activities of himself and of Mrs. Wright since 1922, because a fair investigation based upon all of the facts would establish their absolute innocence of the offense charged or any other offense and which would establish that they had not received one penny as the receipts and vouchers will show, for anything but a lawful purpose, to-wit, the publishing of a book and the preparatory work incident thereto as requested by resolution of said organization.

18. Deponent says, therefore, that from its inception the proceedings by the Department of Justice, leading to said indictment have been erroneous, invalid and cannot be sustained; that he is advised that the conduct of the Assistant District Attorney was so highly prejudicial and resulted in the returning of an indictment by coercion; that the secrecy of the grand jury room was invaded and violated; that said indictment was found without certain essential elements being established; that said indictment was found upon but a portion of the real evidence and much of the testimony taken before the grand jury was incompetent, irrelevant, prejudicial and barred by the statute of limitations and that said indictment in itself was defective and sould be quashed.

Further deponent says not.

Willis T. Gridley.

State of Michigan, County of Eaton, ss.

On this 5th day of December, A. D. 1928, before me, the subscriber, a notary public in and for said county, personally came the above named Willis T. Gridley and made oath that he has read the foregoing instrument by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

George W. Watson,
Notary Public, Eaton County, Mich.
My commission expires Oct. 20th, 1929.

"EXHIBIT A"

UNITED STATES OF AMERICA

IN THE
DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America
vs. No. 14098
Willis T. Gridley, and
Gladys Wright,
Defendants.

Proceedings had in the above entitled cause, before Honorable Arthur J. Tuttle, District Judge, at Detroit, Michigan, Tuesday, March 6, 1928, at 11:30 o'clock A. M.

Appearances:
Gregory Frederick, Assistant United States Attorney,
Harry J. Lippman,
Attorney for the Defendants.

The Court:
Do you have an arraignment here?

Mr. Frederick:
Yes, your Honor.

Mr. Lippman:
In advance of the arraignment, if the Court please, we have already filed motions to quash the indictment. And, in advance of the arraignment, we wish to bring those motions on for hearing.

As yet, we have not seen the indictment, but the question that we raise is as to one of the jurors whom we allege was not upon the assessment roll, and was not a taxpayer, in accordance with the statute. And of course, that would question the entire proceeding.

We attach affidavits resulting from an accurate investigation pertaining to her, and we would ask that your Honor set a time, at which time this matter could be gone into.

The Court:
File your motion, but I will deny it. The Government will look into that matter, and if it is true, get a new indictment by the Grand Jury coming in today. Waste no time with it at all. They will not get away on any such ground as that. I don't know anything about the merits of it, but there will be nobody escape on any such ground as that. Let the Government go thoroughly into that. I will deny the motion now on this record. Go into the matter thoroughly in your office, and if it is true, take a new indictment from the Grand Jury obtained here today.

Mr. Frederick:
Yes, your Honor.

Mr. Lippman:
Further than that, if your Honor please, inasmuch as we have not yet been served with a copy of the indictment, and information, we, of course, are not apprised as to with what we are charged. Before we will be able to enter a plea of any kind, we would like an opportunity to read it.

The Court:
How long is it?

Mr. Frederick:
Eighteen pages, six counts.

The Court:
Read it to them right now. Call them up here, and read the indictment, in the usual form, so that they will hear it. Are there just two defendants?

Mr. Frederick:
Yes.

The Court:
Listen now, don't be talking.

The Clerk:
(Reading):
(Indictment Read.)

Mr. Lippman:
If the Court please, this is the first opportunity that the defendants have had to listen to the indictments. We would ask at this time, with the Court's permission, to file a demand for a specific bill of particulars, so that we might be specifically apprised of some of the matter that we con-

sider of importance. I would bring your Honor's attention to about four that I have gathered in the reading:

The action seems to have been based on what happened in 1922, in a certain society at Wilkes-Barre, Pennsylvania, and other societies. We feel that we have a right to be advised as to the names of the members and the exact time.

Secondly, while names of cities are given wherein certain promises are alleged to have been made, no time has been detailed as to when those meetings or promises were made and we feel that we are entitled to that information.

Third, a general reference is made to the depositing of certain letters in the postoffice at Detroit and other places, but no time is mentioned. We feel that we have a right to be advised as to the time.

Fourth, it is set forth generally that there was a general scheme on the part of these defendants to obtain money from members, but the names of these members are not mentioned. We feel that we have a right to that advice.

As we have heard the indictment read, if your Honor please, there is only one date mentioned in all of the counts which is specific, and that is the 13th of January, 1926, when it is alleged that the defendants received from the postoffice in New York certain letters which were deposited in the postoffice at Detroit, and addressed to them at New York.

In order that a proper plea may be entered by these defendants, we ask leave of this Court to file this demand for a specific bill, and to reserve our plea until such time as we have been more particularly advised.

The Court:

I will construe this motion ore tenus as asking a bill of particulars merely for the purpose of helping the defendants determine whether or not they are guilty of the thing charged against them. I will hold that, for the purpose of pleading, it is not necessary; that they are sufficiently advised for the purpose of entering their plea of guilty or not guilty of the offense as charged against them. It is very easy to tell from hearing that whether or not they are guilty of the things charged against them. The motion is denied. The defendants are required to plead.

Mr. Lippman:

We may, however, file these demands so that they will become of record, if your Honor please?

The Court:

Did the Reporter take this down?

The Reporter:

Yes.

The Court:

If you will pay the Reporter for his time and trouble in taking it down and transacting it, you can have whatever was said here.

Mr. Lippman:

Very well, your Honor.

The Court:

I will require you to plead.

Mr. Lippman:

We, having our rights reserved all of our rights that we have raised this morning, and others that may not have been, the defendants will severally stand mute.

The Court:

The defendants stand mute. Then the Court will enter a plea of not guilty. Has the bond been fixed?

Mr. Frederick:

No, if your Honor please. We recommended a bond of $10,000 apiece.

The Court:

Is there anything to be said on the subject of the bond?

Mr. Lippman:

We feel that inasmuch as these defendants are persons who have long resided within the United States, and who are persons very well known, that a nominal bond should be only required. We can assure the Court that whenever their presence is desired we will have them here.

Mr. Frederick:

If your Honor please, I think more than a nominal bond should be required. These people, I don't know where their address is, but we never have been able to find them. I know they have an address down in New York, at which they are never at. They are traveling around the country. I think there should be a bond sufficient to require their appearance here, not a nominal bond. I am not particularly concerned as to what the amount of the bond is, as long as it is sufficient to guarantee their appearance here. But I do not think a nominal bond would be correct. I think there should be a sufficient bond here to guarantee their appearance.

Mr. Lippman:

I might say, if your Honor please, that the defendants have appeared voluntarily this morning. We have been in touch with Mr. Frederick for some time past, and he has no just occasion thus far to date to be apprehensive that the defendants will abscond. I can furnish the office with their permanent address, and put him in touch with these defendants at any time. We, as members of the Bar, will assure your Honor on this record that we will have them here whenever desired. We ask for a nominal bond.

The Court:

I fix a substantial bond in all cases, because I cannot, of course, determine in advance what the outcome of the lawsuit is going to be, or as to the guilt of the defendants or their innocence. They are presumed to be innocent. But, so far as fixing a bond is concerned that is not a necessary presumption. I fix a substantial bond in every case. If I were to try to look into the reputation of each individual, and fix a high bond only in those cases where I thought ill of the defendants, why I would do harm to those defendants where I fixed it high. The fact is that those defendants who are likely to run away are the ones who can most easily furnish a bond. I will fix the bond at $10,000 for each defendants, two sureties.

(Which was all of the proceedings had in the foregoing entitled cause at said time and place.)

"EXHIBIT B"

Questionnaire

1. Do you understand that the present work and plans of this organization are confined solely to the publication of a book by Mr. Gridley, at our request?
2. Do you understand that if the descendants of A. J. B. went to an attorney, it might take him years to investigate and collect the records, and to go over the 280 odd years of history in this matter, and that we, knowing Mr. Gridley had in the past championed our side of the controversy, sought him out to procure his aid, and secure the benefit of his five years' connection with this matter? Yes.
3. Do you understand that Mr. Gridley finally consented to publish in book form, for public sale, and our purchase, the results of his investigation work in connection with this matter? Yes.

4. Do you believe it is time the A. J. B. descendants became informed of the facts and proofs in regard to this matter, that they should learn what the records show, before doing anything further? Yes.
5. Do you understand that Mr. Gridley is a disbarred attorney? Yes.
6. Do you understand that he was disbarred as a consequence of his connection with the Bogardus matter, and that he, therefore, cannot perform any duties which an attorney is legally authorized to perform, without incriminating himself? Yes.
7. Do you understand that by securing Mr. Gridley's services in connection with the publication of this book, we have eliminated any expense incident to an independent investigation and have thus secured the services of the only man who has stood up and really fought for our side of this matter in the last fifty years, a man who thoroughly believes in the injustice done the descendants of the A. J. B.? Yes.
8. Do you understand that pending the publication of this book, by reason of Mr. Gridley's disbarment, it is insisted that we forget suits, settlements and the like, for his protection? Yes.
9. Do you understand that the descendants of A. J. B. agree to finance the publication of this book by Mr. Gridley? Yes.
10. Do you understand that no one individual can finance the publication of this book, and that it is therefore necessary for all to work to secure the co-operation of all the descendants of A. J. B.; in other words, a united family or organization? Yes.
11. Do you know of any time in the history of this matter when there has been a united family organization? No.

Jan. 2-1926.

12. Do you believe in the plan for a National coast to coast organization of the descendants of A. J. B.? Yes.
13. How much have you contributed to the book fund, which you call membership fee? 15 sus and 81 lvanca.
14. Have you signed an advance subscription for a book? Yes.
15. If you have signed for more than one, how many? 1.
16. If you have not signed an advance subscription blank —do you intend to sign one, and if so when? Eight months having elapsed, can you complete your payments on such book by January 1st, 1926? If you do not intend to subscribe state why.
17. Do you understand that by your pledge you undertook to secure the co-operation of others interested like you in this matter, in order to make possible the financing of the publication of that book? Yes.
18. How many members have you been instrumental in bringing into the organization? About 80 to 100.
19. If none—state why?
20. Have you communicated by letter or otherwise with any persons whom you know are descendants of A. J. B. and whom you feel should co-operate? Yes.
21. If so, how many, and with what results? Some good some bad.
22. Have you furnished the secretary of your society with the names and addresses of these persons whom you know to be interested as descendants, for the purpose of having them co-operate? Yes many.
23. If not—why?
24. Do you belong to any other organization in connection with this matter? No.
25. Have you been contributing to the support of any other organization since November 1923? No.
26. Do you subscribe for a paper or periodical in connection with this matter, outside of your own organization? No.
27. If so, name them? No.
28. Have you filed your genealogy with the Chancery Record? No.
29. If so, who prepared that genealogy for you?
30. What did you pay for that genealogy?
31. Do you understand what public opinion means? Yes.
32. Do you understand the important part it plays in any matter, and why it is essential in this matter? Yes.
33. Do you understand that in order to secure Public Opinion through the sale of the book, it is necessary to have a National Organization, every section represented? Yes.
34. Do you want the organization plans to continue? Yes.
35. If so, are you willing to solemnly pledge and promise your support, so long as Mr. Gridley will stay with this matter? Yes—not forever.
36. Will you, if approached by a stranger, who seeks an interview in regard to your connection with this matter, get his name and address, and make a full report to your society of the interview? Yes.
37. Do you not think that Mr. Gridley is entitled, as a reward for his fearless championship of this cause of ours, to the unqualified support, both moral and financial of every descendant of A. J. B.? Yes.
38. Do you understand that delays mean increased cost to us, and that it is necessary to put a stop to these delays; that having had two years of Mr. Gridley's time, it is now up to us to show that we can lay aside per day, a given amount, sufficient to satisfy him this work can go on uninterruptedly?
39. Will you, therefore, state, what amount, from and after January 1st, 1926, you will pledge your self to pay, regularly monthly, (outside of your society dues) to create a working fund to carry out Mr. Gridley's directions, western crusade or other matters requiring immediate financing, which cannot be taken out of the book fund? $1 a month for 4 months payable on or before April 1, 1926.

Dated, Dec. 19, 1925
Return to your Society or

(Signed) Hannah Grow Lutz
Address 343 Fountain St.
City Rox Phila. State, Penna.
I am a member of Philadelphia Society.

These questions are put to you to satisfy Mr. Gridley that we have a live, fighting organization, willing to back him, and put an end to this wasting of his time, feeling sure that everyone must realize the necessity for continuous financial support in all organization work. What would become of our political organizations, the labor movements, the church and charitable organizations, if they were not financed by their supporters regularly.

Your answers to these questions is imperative, and must be received without delay to be forwarded to Mr. Gridley,

Exhibit 116

QUESTIONAIRE

1. Do you understand that the present work and plans of this organization are confined solely to the publication of a book by Mr. Gridley, at our request?	yes
2. Do you understand that if the descendants of A. J. B. went to an attorney, it might take him years to investigate and collect the records, and to go over the 290 odd years of history in this matter, and that we, knowing Mr. Gridley had in the past championed our side of the controversy, sought him out to procure his aid, and secure the benefit of his five years' connection with this matter?	yes
3. Do you understand that Mr. Gridley finally consented to publish in book form, for public sale, and our purchase, the results of his investigation work in connection with this matter?	yes
4. Do you believe it is time the A. J. B. descendants became informed of the facts and proofs in regard to this matter, that they should learn what the records show, before doing anything further?	yes
5. Do you understand that Mr. Gridley is a disbarred attorney?	so he has told me
6. Do you understand that he was disbarred as a consequence of his connection with the Bogardus matter, and that he, therefore, cannot perform any duties which an attorney is legally authorized to perform, without incriminating himself?	yes
7. Do you understand that by securing Mr. Gridley's services in connection with the publication of this book, we have eliminated any expense incident to an independent investigation and have thus secured the services of the only man who has stood up and really fought for our side of this matter in the last fifty years, a man who thoroughly believes in the injustice done the descendants of A. J. B.?	yes
8. Do you understand that pending the publication of this book, by reason of Mr. Gridley's disbarment, it is insisted that we forget suits, settlements and the like, for his protection?	yes
9. Do you understand that the descendants of A. J. B. agree to finance the publication of this book by Mr. Gridley?	yes
10. Do you understand that no one individual can finance the publication of this book, and that it is therefore necessary for all to work to secure the co-operation of all the descendants of A. J. B.; in other words, a united family or organization?	yes
11. Do you know of any time in the history of this matter when [illegible] a united family organization?	not as large as the Gridley organization

IONAIRE

plans of this on of a book	yes
A. J. B. went vestigate and ars of history ey had in the ht him out to re years' con-	yes
ented to pub- se, the results s matter?	yes
dants became s matter, that oing anything	yes
red attorney?	yes
nsequence of he, therefore, egally author-	yes
s services in ave eliminated tion and have stood up and st fifty years. ice done the	yes
of this book, isted that we ction?	yes
J. B. agree to ley?	yes
ance the pub- sary for all to dants of A. J. ion?	yes
matter when	No

IONAIRE

plans of this on of a book	Yes
A. J. B. went vestigate and ars of history by had in the ht him out to re years' con-	Yes
ented to pub- se, the results matter?	Yes
dants became s matter, that oing anything	Yes After the book is written
red attorney?	Yes
nsequence of he, therefore, egally author-	Yes
s services in ave eliminated tion and have stood up and st fifty years. ice done the	Yes
of this book, isted that we ction?	Yes
J. B. agree to ley?	Yes
ance the pub- sary for all to dants of A. J. ion?	Yes
matter when	No

IONAIRE

plans of this on of a book	Yes
A. J. B. went vestigate and ars of history by had in the ht him out to re years' con-	Yes
ented to pub- se, the results matter?	Yes
dants became s matter, that oing anything	Yes
red attorney?	Yes
nsequence of he, therefore, egally author-	Yes
s services in ave eliminated tion and have stood up and st fifty years. ice done the	Yes
of this book, isted that we ction?	Yes
J. B. agree to ley?	Yes
ance the pub- sary for all to dants of A. J. ion?	Yes
matter when	No

12. Do you believe in the plan for a National coast to coast organization of the descendants of A. J. B.	not sure I do	no	yes	yes	
13. How much have you contributed to the book fund, which you call membership fee?	$15.00 for self 15.00 for Lunt	$25.00	$15.00 each	$15.00 loaned $50	
14. Have you signed an advance subscription for a book?	yes	yes.	Yes		yes
15. If you have signed for more than one, how many?	no	only one	Mrs Turner & Mrs Investtaine 1		Two
16. If you have not signed an advance subscription blank—do you intend to sign one, and if so when? Eight months having elapsed, can you complete your payments on such book by January 1st, 1926? If you do not intend to subscribe state why.		Pd in full			
17. Do you understand that by your pledge you undertook to secure the co-operation of others interested like you in this matter, in order to make possible the financing of the publication of that book?	yes	2 do	yes		yes
18. How many members have you been instrumental in bringing into the organization?	four	$60	Mrs Turner 3 Mrs Investtaine 3		Two
19. If none—state why?					
20. Have you communicated by letter or otherwise with any persons whom you know are descendants of A. J. B. and whom you feel should co-operate?	yes	yes	yes		no
21. If so, how many, and with what results?	Impossible to know	4 letters unanswered	Several-6 or more		
22. Have you furnished the secretary of your society with the names and addresses of these persons whom you know to be interested, as descendants, for the purpose of having them co-operate?	no	no	Mr Page lost them		yes
23. If not—why?	See to buyer list my own writing				
24. Do you belong to any other organization in connection with this matter?		no	No		no
25. Have you been contributing to the support of any other organization since November 1923?		no	No		no
26. Do you subscribe for a paper or periodical in connection with this matter, outside of your own organization?		no	No		no
27. If so, name them?					
28. Have you filed your genealogy with the Chancery Record?		no	No		no
29. If so, who prepared that genealogy for you?					

30. What did you pay for that genealogy?	—			no
31. Do you understand what public opinion means?	yes	yes	yes —	yes
32. Do you understand the important part it plays in any matter, and why it is essential in this matter?	yes	yes.	Yes.	yes
33. Do you understand that in order to secure Public Opinion through the sale of the book, it is necessary to have a National Organization, every section represented?	yes	yes	Yes	yes
34. Do you want the organization plans to continue?	yes	yes	Yes	Yes
35. If so, are you willing to solemnly pledge and promise your support, so long as Mr. Gridley will stay with this matter?	This sounds like an entire death to me part agreement I might want a deportation	yes as much as possible	Yes	—
36. Will you, if approached by a stranger, who seeks an interview in regard to your connection with this matter, get his name and address, and make a full report to your society of the interview?	yes	I will	Yes	yes
37. Do you not think that Mr. Gridley is entitled, as a reward for his fearless championship of this cause of ours, to the unqualified support, both moral and financial of every descendant of A. J. B.?	yes	I do	Yes	yes
38. Do you understand that delays mean increased cost to us, and that it is necessary to put a stop to these delays; that having had two years of Mr. Gridley's time, it is now up to us to show that we can lay aside per-day, a given amount, sufficient to satisfy him this work can go on uninterruptedly?	yes	yes	Yes	yes
39. Will you, therefore, state, what amount, ~~from and after January 1st, 1926~~, you will pledge yourself to pay, ~~regularly monthly~~ (outside of your society dues) to create a working fund to carry out Mr. Gridley's directions, western crusade or other matters requiring immediate financing, which cannot be taken out of the book fund?	$5.00 Jan 1, 1926 5.00 Mar 1 1926	yes I will pay 10 Dollars and no more to this Pledge (No monthly Payment)	We have $12 — to help carry out this crusade or in some other manner and the cause —	$10 on full

Dated, November Dec. 22 1925

Return to your Society or

(Signed) Ida Bellinger

Address 1016 Electric St

City Flint State Mich

I am a member of Flint #5 Society

(Signed) Ida Horning

Address Holland

City State Mich

I am a member of Holland Society

(Signed) Frank S Igner

Address 2719 Grand River Ave

City Detroit State Michigan

I am a member of Detroit Society

(Signed) C D Mudger

Address 2921 Hutson Ave

City Detroit State Mich

I am a member of Detroit Society

These questions are put to you to satisfy Mr. Gridley that we have a live, fighting organization, willing to back him, and put an end to this wasting of his time, feeling sure that everyone must realize the necessity for continuous financial support in all organization work. What would become of our political organizations, the labor movements, the church and charitable organizations, if they were not financed by their supporters regularly.

Your answers to these questions is imperative, and must be received without delay to be forwarded to Mr. Gridley, for upon your answer depends his future action.

JAN 2 - 1926

JAN 11 1926

JAN 11 1926

for upon your answer depends his future action.

New address 5821 Henry Ave. Blvd. in near future (6 weeks.)

"EXHIBIT D"

Pledge

.....Society No.

To—W. T. Gridley, P. O. Box 71, Times Square Station, New York City

Sir: This is to advise that I have enrolled as a member of the .....Society No..... of the Advocates of Justice for the descendants of Anneke Jans Bogardus, and have paid my membership fee for the book fund of $25.00 to be forwarded to you, at the same time signing, on separate form, an advance subscription for a copy of the book to be published by you, giving the results of your five years' connection with the Bogardus matter, by reason of which connection, you were disbarred.

I understand the arrangement between you and the societies is that you are to retain fifteen per cent of the proceeds of the sale of the said book, and that eighty-five per cent, less the expenses of the publication, is to go into a fund to be turned over to a National Organization to be formed following the publication of said book; the first publication by the descendants giving their side of the controversy.

I further understand that the burden of financing the publication of this book, rests upon the shoulders of the descendants of A. J. B., and that the present movement to organize all sections of the country where there are descendants, is likewise the duty of the members of the different societies in the organization. To that end, therefore, I pledge my active co-operation and financial support to my society to effect a speedy organization of A. J. B. descendants.

Please send me promptly, upon receipt, acknowledgment of my membership fee for the book fund.

Dated.....192

Name .....

Street .....

City ..... State.....

None But New Members Must Sign Pledge. Membership fees for book fund will be held here until signed pledge received. Pending the publication of the book, forget suit, settlements, case and the like, and do not allow anyone to inject either or any of these words into any discussion of the work of this organization, understanding at all times that the plan of this organization is the publication of a book, and refuse to discuss what you may do with the book after it is published.

"EXHIBIT E"

To The National Headquarters of The Order
of The Advocates of Justice For The Descendants
of Anneke Jans Bogardus

Gentlemen:

After due deliberation it has become evident to me that I must announce the severance of my relations with your Order, finally and unalterably.

After having made certain statements to me as an inducing cause to connect myself again with your work, i. e., that you had been striving for months to get an attorney to take up this work for you, but unsuccessfully; using my old friend's name as another inducement; that you had some 2,000 heirs back of this movement, you obtained my consent. Almost immediately I found your statement false as to the number of subscribers you had back of this work, and it was then that I laid out the plan for the publication of the records in book form, which you heartily approved and endorsed; and heralded from one end of the country to the other; realizing this plan would give you two most essential thing public opinion, and the needed finances to carry on your work. There is no question but what you tried to discard this plan for one of your own making, without any previous consultation or notice to me, and to this selfmade plan of yours I cannot be a party. The evidence of your intentions is overwhelming, for your president's letters establish it beyond any question whatsoever.

I have told you, and I now reiterate it, I cannot be a party to the bringing of a premature suit; for I hold the opinion that there is no one man in the United States today who, without public opinion back of him, could get any consideration in this matter; it is my candid opinion that any such move would retard your work for at least five years, if it did not kill it for all time.

It has also become apparent to me, though at the outset of our relations it was no concern of mine, as it was then understood my name would not be used publicly or in correspondence by you, that your National headquarters is opposed to my insistence of the issuance of itemized monthly statements, to be furnished to the contributor of the funds for the promulgation of this work, in order that each contributor may see that their money is being used for the purposes for which it is intended. I hold that I did not go out of my province in making this demand, because I found that you were using my name to raise funds. I am frank to say that I became more insistent when I was informed that made the following remark to one of the heirs: —"not to let an attorney know how much money you have in the treasury lest he find away to spend it"—for that certainly showed a degree of skepticism so far as I was concerned, and your president should have understood that the money was being furnished for no other reason than the furtherance of this work—not for a sinking fund.

I have helped you in every conceivable way—drew up your constitution and by laws for you at the request of your president, and after you had been organized several months and running without such requisite articles; have helped you with your correspondence; have made trips for you, etc.

You have been given ample opportunity to mend your ways since my first resignation of September 20th, which I reconsidered at the behest of your President—Mr. Jones and Mr. Tefft, and have but asked the renewal of your pledge to the carrying out the plans evolved by me, and to which you then gave your hearty support, and which was thought of so highly by you, and the election of a new treasurer. I have received no acknowledgment of these requests, although they were asked for by your Secretary. Therefore, I now feel, that self-preservation is the first law of nature, and that in view of your President's letters it is my bounden duty to broadcast my resignation to the interested parties lest the wrong impression be gathered from your presidents letters.

Having lost confidence in the purposes and intentions of your National Officers I refuse to allow you to use my name further.

Very truly yours,

W. T. Gridley.

Post Office Box 71
Times Square Station,
New York City.

"EXHIBIT F"

Resolution

WHEREAS, every member of this Society knows full well that Mr. Gridley is a disbarred attorney, and that from the first he has told us that we must not refer to him as our attorney or legal adviser; but that if we must refer to him we do so as our representative or adviser; and

WHEREAS, Mr. Gridley has insisted from the first that each and everyone contributing to the funds for the publication of the book shall sign pledges in order to protect him, in case the Post Office Department require him to show for what purpose money is coming through the mails, and in order that he will be in a position to back up the receipt of every dollar sent him, and

WHEREAS, Mr. Gridley from the first, and throughout this whole matter, has insisted that we must forget suits and settlements, and not collect money for the purpose of or under the promise of suits or settlements pending the publication of this book, which book it is understood each society may present to an attorney of their own selection, and

WHEREAS, it is perfectly understood by all of us that the money being raised, which has been raised, and which might be raised is for the purpose of financing the overhead and expenses incident to the publication of the book and the procurement of records, etc.; and

WHEREAS: it has recently come to Mr. Gridley's attention his wishes are not being carried out.

NOW, THEREFORE, be it

RESOLVED: By the Detroit society, that Mr. Gridley be informed that the members of this society understand now, and have understood from the first that he is a disbarred attorney, and cannot act as our attorney, or as legal adviser of the organization; that we also understand that he has not attempted to act as such attorney, and that we must not mention him, by letter or otherwise, as such attorney; And be it further

RESOLVED: that the members of the Detroit society having understood from the first that each member should sign a pledge to furnish to Mr. Gridley for his protection, that the secretary of this society is directed to ascertain from each member whether or not they have signed such pledge, indicating for what use the money contributed by them was to be used, and those who have not signed such pledge, shall be requested so to do at once, and said pledge shall be furnished to Mr. Gridley, said member being privileged to make such changes in said pledge as they may desire; And be it further

RESOLVED, that the members of the Detroit society have understood that Mr. Gridley's work is solely and entirely that of publishing a book for the heirs, and at the heirs' request, on the condition that they finance it, and that the members of the Detroit society will gladly go on record as stating that he has not solicited them to contribute to the publication of this book, and has left the matter of raising the funds for the publication of the book entirely in the hands of the heirs themselves; and be it further

RESOLVED, that a copy of this resolution be furnished to each and every society in the organization with a request that they pass like resolutions and send them in to Mr. Gridley, executed by the secretary.

Dated: December, 1924. John W. Page, Pres.,
Susie E. Brower, Sec.,
J. C. Price, Treasurer,
Wm. Drew, 2nd Pres.

State of Michigan, County of Wayne, ss.

Frank L. Pearce being duly sworn deposes and says:

That on or about August 24th, 1927, he forwarded by registered mail to Gregory H. Frederick, Assistant United States District Attorney, at Detroit, Michigan, the pamphlet entitled "Stocktaking" dated November 1st, 1925, as circulated and sent to all the members of the organization known as the Advocates of Justice for the Descendants of Anneke Jans Bogardus, see Registered receipt No. 817254, at the same time enclosing in the same envelope the blank form of Pledge, Advance Book, Subscriptions and the Questionnaire, used throughout the said organization, and all declaratory of its plans and purposes; that your deponent particularly requested a return receipt for the said registered matter, which receipt he later obtained.

That prior to the forwarding of the above mentioned printed matter to the said Gregory H. Frederick, Willis T. Gridley, one of the defendants herein had stated to your deponent that he wished these documents could be placed in the hands of the said Frederick, in order to put him in a position where he would be compelled to present them to any Grand Jury taking this matter under investigation, and likewise be compelled to interrogate witnesses with a view of ascertaining whether they had signed such papers specifically indicating and declaring for what purpose they had paid money into the organization.

Your deponent further says that on or about the middle of August, he forwarded by registered mail (see Registered Receipt 848490) a copy of the minutes of a meeting of the Chicago Society, a unit of said organization, in order that the said Frederick would be advised that W. J. Tomkins had been repudiated by his organization; that this action was taken because a member of the Chicago society had been advised that the said Tomkins had been to see Gregory H. Frederick, and was holding himself in readiness to appear before the authorities there.

That prior to this deponent was present at several interviews had with members of the Chicago society, and that the said members stated in the presence of your deponent that the said Tomkins had been for sometime misrepresenting the plans and purposes of the organization to them; discovery of which was made upon hearing the said Willis T. Gridley talk in regard to the plans and purposes; that the said Tomkins made use of the organization funds for his own purposes, and had replaced them later, which fact was known to some members of the Chicago society; that the eye of suspicion had been for a long time on Mr. Tomkins and his frequent visits to New York, Detroit, Philadelphia and other points where the organization had societies, and your deponent had heard the said Defendant Gridley state that he had always questioned the sincerity of the said W. J. Tomkins' connection with this organization.

Your deponent further says that on or about the 7th and 8th of March, at the request of the defendant Willis T. Gridley, he made attempts to obtain a list of the Grand Jurors who sat upon the indictment of the said defendants, even engaging an attorney to go to the Federal Building to secure such a list from the Clerk of the District Court; that said attorney returned and reported to your deponent that they only made up three lists, one for the United States Marshal, one for the District Attorney, and one for the Clerk, and that he was unable to get such list of said Grand Jurors for your deponent.

And further deponent sayeth not.

Frank L. Pearce.

Subscribed and sworn to before me this 19th day of November, 1928.

Florence R. McGivney,
Notary Public, Detroit,
Wayne County, Mich.
(Seal) My commission expires May 2, 1931.

State of Michigan, County of Wayne, ss.

Louis Andrejewski, being first duly sworn, deposes and says, that the deponent is a resident of the City of Detroit, County of Wayne and State of Michigan, and the latter part of January, 1928, A. D., he went to the United States District Court's Clerk's office, situated in the Post Office, in the City of Detroit, State of Michigan, and at the request of Willis T. Gridley he asked the Clerk in charge of the office for the list of names of the Grand Jury, then sitting in session, and was told that the names of the Grand Jury in session would not be given to any one until after the Grand Jury was dismissed which was to be some time in March.

Deponent further says that again the first part of February, 1928, A. D., at the instance of Willis T. Gridley he went to the Chief Clerk of the United States District Court situated in the Post Office, at Detroit, Michigan, and was told by Lew Levinson, Chief Clerk, that the names of the Grand Jurors would not be given until they were dismissed.

Further deponent says not.

Louis Andrzejewski.

Subscribed and sworn to before me this 5th day of November, A. D. 1928.

Edward Z. Wrobbewski,
Notary Public, Detroit, Wayne County, Michigan.
My commission expires August 7, 1932.

MOTION TO QUASH, AFFIDAVITS, NOTICE, ETC.

(Filed December 11, 1928)

I admit due services on me of a copy of the within, this 10th day of December, A. D. 1928.

G. H. Frederick,
Asst. United States District Attorney
for the Eastern District of Michigan,
Southern Division.

To John R. Watkins, United States
District Attorney for said District:
Sir:

You will please Take Notice that the motion to quash the indictment, etc., of which the attached is a true copy will be brought on for hearing and argument before Honorable Charles C. Simons, Judge of said court, on Monday the 17th day of December, A. D. 1928 in the courtrooms in the Federal Building in the City of Detroit, said district, at the opening of court on said day, or as soon thereafter as counsel may be heard.

Yours, etc.
G. E. McArthur,
Dunham & Cholette,
Attorneys for Respondents.

Dated: December 4, A. D. 1928.

ANSWER AND AFFIDAVIT

(Filed Jan. 28, 1929)

Now comes the United States of America by John R. Watkins, United States Attorney, for the Eastern District of Michigan, and in answer to a motion filed in the above entitled cause on the 4th day of December, A. D. 1928, says:

1. Answering Paragraph one and all the subdivisions therein denies all the allegations therein contained.

2. Answering Paragraph two and all the subdivisions therein, this plaintiff denies the allegations therein contained.

3. Answering Paragraph three and all the subdivisions therein plaintiff denies all the allegations therein contained as evidenced by affidavits thereto attached, and made a part hereof.

4. Answering Paragraph four and all the subdivisions therein this plaintiff denies all allegations and conclusions of law therein contained with the exception of subdivision (i).

Wherefore, this plaintiff asks that said motion be dismissed.

John R. Watkins,
United States Attorney.

.....
Assistant United States Attorney
Eastern District of Michigan

State of Michigan, County of Wayne, ss.

Gregory H. Frederick, being duly sworn, deposes and says he is Chief Assistant United States Attorney for the Eastern District of Michigan, and that during the November Term of Court, A. D. 1927, he presented certain evidence before the United States Grand Jury, involving the alleged use of the mails by one Willis T. Gridley and Gladys Wright. That he has read the motion to dismiss filed by the defendants herein, and has read the affidavits thereto attached. That he denies that he used the word "liar" to either one Lizzie Matthews or one Susie Brower, witness before the said Grand Jury in said matter, but that he distinctly recalls witness Matthews admitting before the said Grand Jury that she falsely testified to a certain part of her testimony, and that she was asked why she lied. That the Witnesses Matthews and Brower were apparently interested and hostile witnesses and were treated accordingly, but in no other manner than he has treated other interested and hostile witnesses on many occasions in this Court.

This deponent denies any personal prejudice against either defendants Gridley or Wright, and says until this matter was officially brought to his notice he had never heard of either or had he ever seen or heard of any of the witnesses who testified before the Grand Jury.

This deponent further says that never at any time before or after the presentation of this matter to the Grand Jury has he heard from, seen, or talked directly or indirectly to any one who might be interested in any matters collateral to the issues in this case, and that he was no more or no less interested in the findings of the Grand Jury in this matter than in the findings of the Grand Jury in hundreds of other cases that he has presented to this and other Grand Juries.

Gregory H. Frederick,
Chief Assistant United States Attorney.

Subscribed and sworn to before me this 28th day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My Commission expires June 26, 1932.

State of Michigan, County of Wayne, ss.

Fred J. Whines, being duly sworn, deposes and says that he is a resident of the City of Detroit, County of Wayne, State of Michigan, and that he was a member of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division, for the November Term, A. D. 1927. That he was a member of the said Grand Jury, and that said Grand Jury during its term investigated the activities of one Willis T. Gridley and one Gladys Wright. That after said Grand Jury was dismissed he was called upon by a person who represented himself as an agent of said Willis T. Gridley and Gladys Wright and submitted to this deponent certain questions relative to the investigation of the said Willis T. Gridley and Gladys Wright by the said Grand Jury. That this deponent made certain answers in writing to said written questions, and that the following is a copy of said questions and answers:

Q. Were any writings submitted to the Grand Jury? If so what were they? A. I don't remember.

Q. Did they produce the letters? A. I don't remember.

Q. Did Mr. Frederick call Mrs. Brower a liar and perjurer before the jury? A. Not in my hearing being on the third floor at the time Mrs. Brower was on the stand.

Q. Did he call Walters into the room and tell him to take her out and lock her up? A. Mrs. Brower was leaving the jury room as I entered, consequently did not hear what was said.

Q. Did they say there is nothing to do but to return an indictment? A. Not in my hearing.

Q. Did he call Gridley a grafter? A. Did not hear that remark at any time.

Q. Were you told Mrs. Brower changed her story? A. Yes, by members of the Jury after it had adjourned for the day.

That shortly after another man called upon this deponent and told him that he had prepared an affidavit based upon his answers to such aforementioned questions. That this deponent asked this man if they were the same as the answers he had given to the aforesaid questions and on being informed that they were, signed the said affidavit without completely seeing the same.

That the said affidavit is false and erroneous in fact, and is not in conformity with the answers that this deponent made to the questions submitted to him, and that he was tricked by fraud and deception into signing said affidavit. Deponent says further that he was a member of the said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified in the above mentioned investigation, and that he does not recall Assistant Gregory H. Frederick using the word "liar" either to Mrs. Brower or Mrs. Matthews, but that the witness Matthews was asked why she lied. That the witness Matthews was an apparently hostile and interested witness, and admitted before said Grand Jury to the falsifying of a certain part of her testimony. That the witnesses Matthews and Brower were not treated by the said Gregory H. Frederick in any other manner than an attorney could and would treat an apparently interested and hostile witness, as this deponent has seen and heard attorneys question such witnesses in open court. That there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That the United States Postal Inspector Walters was not in the Grand Jury Room during their deliberations at any time. That there was evidence introduced establishing the use of the mails by the said defendants.

Subscribed and sworn to before me this 4th day of January, A. D. 1929.

Fred G. Whines,
Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires June 26, 1932.

State of Michigan, County of Wayne, ss.

Bernard Wendell, being duly sworn, deposes and says that he is a resident of the City of Detroit, County of Wayne, State of Michigan. That he was a member of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division for the November Term, A. D. 1927, that he was a member of said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified before the said Grand Jury in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright; that on the 1st day of December, A. D. 1928, he made a statement to one McDonald, who apparently was an employee of said Willis T. Gridley, that said statement was made and signed without sufficient deliberation and on the spur of the moment at the urgent solicitation and request of said McDonald. That he has since read the said statement and after full consideration of its contents now says that said statement is only correct in two particulars: First that the word "liar" was not used to Mrs. Brower by Assistant United States Attorney Gregory H. Frederick, but that she was asked if she knew what perjury was, that at no time to any witness was the word "liar" used, but that Mrs, Matthews was asked why she was lying. Second that evidence was introduced establishing the use of the United States mails upon which the indictment was based. Further that Mrs. Matthews admitted to the said Grand Jury that she falsified her testimony in certain particulars and that no attempt was made by Gregory H. Frederick to intimidate or coerce any witness before the said Grand Jury, and that the said Gregory H. Frederick did not treat said witnesses Brower or Matthews in any other manner than an attorney could and would treat an apparently hostile and interested witness, as this deponent has seen and heard attorneys treat such witnesses in open court.

That United States Postal Inspector Walters was not in the Grand Jury room at any time during their deliberations.

Bernard Wendell,

Subscribed and sworn to before me this 2nd day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires 6-26-32..

State of Michigan, County of Wayne, ss.

Thomas Winn, being duly sworn, deposes and says that he is a resident of the City of Detroit, State of Michigan, that he was a member of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division, for the November Term, A. D. 1927. That he was a member of the said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified in the investigation to the activities of one Willis T. Gridley and one Gladys Wright. That he does not recall Assistant United States Attorney Gregory H. Frederick using the word "liar" either to Mrs. Brower or Mrs. Matthews, That the witnesses Matthews and Brower were not treated by the said Gregory H. Fred-

erick in any manner other than an attorney could and would treat an apparently interested and hostile witness, as this deponent has seen and heard attorneys question such witnesses in open court. That there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That United States Postal Inspector Walters was not in the Grand Jury room during their deliberations at any time.

That there was evidence introduced establishing the use of the mails by the said defendants.

Thomas Winn.

Subscribed and sworn to before me this 5th day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires June 26, 1932.

State of Michigan, County of Wayne, ss.

David A. Green, being duly sworn, deposes and says that he is a resident of the City of Pontiac, Oakland County, State of Michigan, and that he was a member of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division, for the November Term, A. D. 1927, that he was a member of the said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright; that he does not recall Assistant United States Attorney Gregory H. Frederick using the word "liar" to either Mrs. Brower or Mrs. Matthews, but that the witness Matthews was asked why she lied. That the witness Matthews was apparently an interested and hostile witness and admitted before the said Grand Jury to the falsifying of a certain part of her testimony. That the witnesses Matthews and Brower were not treated by the said Gregory H. Frederick in any other manner than an attorney could and would treat an apparently interested and hostile witness, as this deponent has seen and heard attorneys question such witnesses in open court, and that there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That the United States Postal Inspector Walters was not in the Grand Jury room during their deliberations at any time. That there was evidence introduced establishing the use of the mails by the said defendants.

David A. Green.

Subscribed and sworn to before me this 4th day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires June 26, 1932.

State of Michigan, County of Wayne, ss.

Bennett C. Root, being duly sworn, deposes and says that he is a resident of the Village of Manchester, County of Washtenaw, State of Michigan, and that he was a foreman of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division, for the November Term, A. D. 1927, that he was foreman of the said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright; that he does not recall Assistant United States Attorney Gregory H. Frederick using the word "liar" to either Mrs. Brower or Mrs. Matthews, but that the witness Matthews was asked why she lied, that the witness Matthews was apparently an interested and hostile witness and admitted before the said Grand Jury to the falsifying of a certain part of her testimony. That the witnesses Matthews and Brower were not treated by the said Gregory H. Frederick in any other manner than an attorney could and would treat an apparently interested and hostile witness, as this deponent has seen and heard attorneys question such witnesses in open court, and that there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That the United States Postal Inspector Walters was not in the Grand Jury room during their deliberations at any time. That there was evidence introduced establishing the use of the mails by the said defendants.

Bennett. C. Root.

Subscribed and sworn to before me this 10th day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires June 26, 1932.

State of Michigan, County of Wayne, ss.

Mrs. Harriet Champlin, being duly sworn, deposes and says that she is a resident of the City of Detroit, County of Wayne, State of Michigan, and that she was a member of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division, for the November Term, A. D. 1927, that she was a member of the said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright; that she does not recall Assistant United States Attorney Gregory H. Frederick using the word "liar" to either Mrs. Brower or Mrs. Matthews, but that the witness Matthews was asked why she lied, that the witness Matthews was apparently an interested and hostile witness and admitted before the said Grand Jury to the falsifying of a certain part of her testimony. That the witnesses Matthews and Brower were not treated by the said Gregory H. Frederick in any other manner than an attorney could and would treat an apparently interested and hostile witness, as this deponent has seen and heard attorneys question such witnesses in open court, and that there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That the United States Postal Inspector Walters was not in the Grand Jury room during their deliberations at any time. That there was evidence introduced establishing the use of the mails by the said defendants.

Harriet Champlin.

Subscribed and sworn to before me this 3rd day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires June 26, 1932.

State of Michigan, County of Wayne, ss.

Gladys T. Wendt, being duly sworn, deposes and says that she is a resident of the Village of Northville, State of Michigan, and that she was a member of the United States

Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division, for the November Term, A. D. 1927, that she was a member of the said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright; that she does not recall Assistant United States Attorney Gregory H. Frederick using the word "liar" to either Mrs. Brower or Mrs. Matthews, but that the witness Matthews was asked why she lied, that the witness Matthews was apparently an interested and hostile witness and admitted before the Grand Jury to the falsifying of a certain part of her testimony. That the witnesses Matthews and Brower were not treated by the said Gregory H. Frederick in any other manner than an attorney could and would treat an apparently interested and hostile witness, as this deponent has seen and heard attorneys question such witnesses in open court, and that there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That the United States Postal Inspector Walters was not in the Grand Jury room during their deliberations at any time. That there was evidence introduced establishing the use of the mails by the said defendants.

Gladys T. Wendt.

Subscribed and sworn to before me this 4th day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires June 26, 1932.

State of Michigan, County of Wayne, ss.

Mrs. Pearl A. Jones, being duly sworn, deposes and says that she is a resident of the City of Detroit, County of Wayne, State of Michigan, and that she was a member of the United States Grand Jury for the United States District court for the Eastern District of Michigan, Southern Division, for the November Term, A. D. 1927, that she was a member of the said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright; that she does not recall Assistant United States Attorney Gregory H. Frederick using the word "liar" to either Mrs. Brower or Mrs. Matthews, but that the witness Matthews was asked why she lied, that the witness Matthews was apparently an interested and hostile witness and admitted before the said Grand Jury to the falsifying of a certain part of her testimony. That the witnesses Matthews and Brower were not treated by the said Gregory H. Frederick in any other manner than an attorney could and would treat an apparently interested and hostile witness as this deponent has seen and heard attorneys question such witnesses in open court, and that there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That the United States Postal Inspector Walters was not in the Grand Jury room during their deliberations at any time. That there was evidence introduced establishing the use of the mails by the said defendants.

Pearl A. Jones.

Subscribed and sworn to before me this 3rd day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan
My commission expires 6-26-32.

State of Michigan, County of Wayne, ss.

Stephen H. Tredway, being duly sworn, deposes and says that he is a resident of the Village of Farmington, County of Wayne, State of Michigan, and that he was a member of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division, for the November Term, A. D. 1927, that he was a member of the said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright; that he does not recall Assistant United States Attorney Gregory H. Frederick using the word "liar" to either Mrs. Brower or Mrs. Matthews, but that the witness Matthews was asked why she lied, that the witness Matthews was apparently an interested and hostile witness and admitted before the said Grand Jury to falsifying a certain part of her testimony. That the witnesses Matthews and Brower were not treated by the said Gregory H. Frederick in any other manner than an attorney could and would treat an apparently interested and hostile witness, as this deponent has seen and heard attorneys question such witnesses in open court, and that there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That the United States Postal Inspector Walters was not in the Grand Jury room during their deliberations at any time. That there was evidence introduced establishing the use of the mails by the said defendants.

Stephen H. Tredway.

Subscribed and sworn to before me this 4th day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires June 26, 1932.

State of Michigan, County of Wayne, ss.

Mrs. Myrta Hutchings, bein duly sworn, deposes and says that she is a resident of the City of Detroit, County of Wayne, State of Michigan, and that she was a member of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division, for the November Term, A. D. 1927, that she was a member of the said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright; that she does not recall Assistant United States Attorney Gregory H. Frederick using the word "liar" to either Mrs. Brower or Mrs. Matthews, but that the witness Matthews was asked why she lied, that the witness Matthews was apparently an interested and hostile witness and admitted before the said Grand Jury to the falsifying of a certain part of her testimony. That the witness Matthews and Brower were not treated by the said Gregory H. Frederick in any other manner than an attorney could and would treat an apparently interested and hostile witness, as this deponent has seen and heard attorneys question such witnesses in open court, and that there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That the United States Postal Inspector Walters was not in the Grand Jury room during their deliberations at any time. That there was evidence introduced establishing the use of the mails by the said defendants.

Myrta E. Hutchings.

Subscribed and sworn to before me this 3rd day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires June 26, 1932.

State of Michigan, County of Wayne, ss.

Mrs. Florence Signor, being duly sworn, deposes and says she is a resident of the City of Ypsilanti, County of Washtenaw, State of Michigan, and that she was a member of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division for the November Term, A. D. 1927, that she was a member of the said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright; that she does not recall Assistant United States Attorney Gregory H. Frederick using the word "liar" to either Mrs. Brower or Mrs. Matthews, but that the witness Matthews was asked why she lied, that the witness Matthews was apparently an interested and hostile witness and admitted before the said Grand Jury to the falsifying of a certain part of her testimony. That the witnesses Matthews and Brower were not treated by the said Gregory H. Frederick in any other manner than an attorney could and would treat an apparently interested and hostile witness, as this deponent has seen and heard attorneys question such witnesses in open court, and that there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That the United States Postal Inspector Walters was not in the Grand Jury room during their deliberations at any time. That there was evidence introduced establishing the use of the mails by the said defendants.

(Mrs.) Florence W. Signor.

Subscribed and sworn to before me this 3rd day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires June 26, 1932.

State of Michigan, County of Wayne, ss.

Mrs. Alice Gutenberg, being duly sworn, deposes and says that she is a resident of the City of Detroit, County of Wayne, State of Michigan, and that she was a member of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division, for the November Term, A. D. 1927, that she was a member of the said Grand Jury and was present when one Lizzie Matthews and one Susie Brower testified in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright; that she does not recall Assistant United States Attorney Gregory H. Frederick using the word "liar" to either Mrs. Brower or Mrs. Matthews, but that the witness Matthews was asked why she lied, that the witness Matthews was apparently an interested and hostile witness and admitted before the said Grand Jury to the falsifying of a certain part of her testimony. That the witnesses Matthews and Brower were not treated by the said Gregory H. Frederick in any other manner than an attorney could and would treat an apparently interested and hostile witness, and that there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That the United States Postal Inspector Walters was not in the Grand Jury room during their deliberations at any time. That there was evidence introduced establishing the use of the mails by the said defendants.

Alice M. Gutenberg.

Subscribed and sworn to before me this 2nd day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires June 26, 1932.

State of Michigan, County of Wayne, ss.

Charles D. Roberts, being duly sworn, deposes and says that he is a resident of the City of Detroit, County of Wayne, State of Michigan, and that he was a member of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division, for the November Term, A. D. 1927, that he was a member of the said Grand Jury and was present when one Lizzie Matthews, and one Susie Brower testified in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright; that he does not recall Assistant United States Attorney Gregory H. Frederick using the word "liar" to either Mrs. Brower or Mrs. Matthews, but that the witness Matthews was asked why she lied, that the witness Matthews was apparently an interested and hostile witness and admitted before the said Grand Jury to the falsifying of a certain part of her testimony. That the witnesses Matthews and Brower were not treated by the said Gregory H. Frederick in any other manner than an attorney could and would treat an apparently interested and hostile witness, and that there was no undue pressure or intimidation used to cause said witnesses to testify falsely.

That the United States Postal Inspector Walters was not in the Grand Jury room during their deliberations at any time. That there was evidence introduced establishing the use of the mails by the said defendants.

Charles D. Roberts.

Subscribed and sworn to before me this 2nd day of January, A. D. 1929.

Mildred G. Cloonan,
Notary Public, Wayne County, Michigan.
My commission expires 6-26-32.

State of Michigan, County of Wayne, ss.

Charles A. Dubuar being sworn deposes and says that he is a resident of the Village of Northville, State of Michigan, and that he was a member of the United States Grand Jury for the United States District Court for the Eastern District of Michigan, Southern Division for the November Term, A. D. 1927. That he was a member of said Grand Jury, and was present when one Lizzie Matthews and one Susie Brower testified before said Grand Jury, in an investigation concerning the activities of one Willis T. Gridley and one Gladys Wright. That he does not recall Assistant United States Attorney Gregory H. Fredericks using the word "liar" to either Mrs. Brower or Mrs. Matthews. That to the best of his knowledge and belief said Fredericks did not threaten or attempt to intimidate the said witness Matthews and witness Brower, and that the said Fredericks did not treat the said witnesses Matthews or Brower in any other manner than an attorney could and would treat an apparent hostile and unwilling witness, as

this deponent has seen and heard in open court. That this deponent has a distinct idea of the hostility and unwillingness to testify of the witness Mrs. Matthews, and in his own mind is firmly convinced that the said Mrs. Matthews was not telling the entire truth in her testimony before the said Grand Jury.

Charles L. Dubuar.

Subscribed and sworn to before me this 31st day of December, A. D. 1929.

Russell C. Terry,
Notary Public, Wayne County, Michigan.
My commission expires Dec. 2, 1930.

ORDER OVERRULING MOTION TO QUASH

(Entered January 28, 1929, by Tuttle, J.)

In this cause, motion to quash coming on for hearing pursuant to notice and after hearing the arguments of attorneys for respective parties, it is by the Court now here ordered that said motion be and the same is hereby overruled, and that the United States Attorney file and serve upon defendants' attorney a Bill of Particulars on or before January 31st, 1929, and the case is hereby set down for trial by jury at the opening of court on February 19th, 1929.

EXCEPTIONS TO DENIAL OF MOTION TO QUASH INDICTMENT

(Filed February 5, 1929)

Now comes Willis T. Gridley and Gladys Wright respondents in said cause, by their attorneys, Messrs. Dunham & Cholette, and G. Elmer McArthur, and except to the denial of their motion to quash the indictment and to dismiss said cause as follows:

1. They except to the denial of said motion for the reason that the record establishes the indictment in question was returned by the grand jury without evidence establishing that the crime charged had been committed, that is, that evidence was wholly lacking upon material elements of said crime.

2. They except to the denial of said motion for the second reason therein set forth, viz, that documentary evidence in the possession of the government officials was improperly suppressed and concealed from said grand jury, which evidence, if produced, would have established the innocence of respondents and would have prevented the returning of any indictment.

3. They except to the denial of said motion for the third reason set forth in said motion, because improper tactics and methods were used in obtaining said indictment, because said grand jury was coerced and because the privacy of the grand jury was invaded.

4. They except further to the denial of their said motion for the reason that said indictment is fatally defective, fails to properly charge the commission of any crime and because the same is insufficient in law.

5. They except generally to the denial of their said motion, the reasons given by the court being erroneous in fact and in law.

6. They except to the ruling of the court in denying said motion for the reason that the court should have granted the same, should have quashed the indictment and should have dismissed respondents, his failure to so do being erroneous as a matter of law.

G. Elmer McArthur,
Dunham & Cholette,
Atorneys for Respondents.

MOTION TO WITHDRAW PLEAS AND FILE PLEAS IN ABATEMENT AND DEMURRERS

(Filed Feb. 14, 1929)

Now come Willis T. Gridley and Gladys Wright, defendants above named, in their own proper person and respectively move the court now here to withdraw the plea of not guilty heretofore and on to-wit the 6th day of March, A. D. 1928, entered by direction of the court after said respondents had been arraigned, had heard the reading of the indictment and announced that they would stand mute, respondents herein desiring to file forthwith a demurrer and to file forthwith a plea in abatement, copies of which have been heretofore duly served upon the United States District Attorney.

G. Elmer McArthur,
Dunham & Cholette,
John W. Dunham,
Attorneys for Defendants.

NOTICE OF HEARING ON MOTION TO WITHDRAW PLEAS

(Filed Feb. 14, 1929)

To John R. Watkins, United States Attorney for the Eastern District of Michigan, Southern Division:

Please take notice that on Monday, February 18th, at 10:00 A. M. or as soon thereafter as counsel can be heard, we shall appear before Honorable Arthur J. Tuttle, District Judge, and ask the court to withdraw the plea of not guilty entered upon direction of the court when the respondents herein stood mute, in order to demur to the indictment returned in said cause and to file a plea in abatement therein and on the withdrawal of such plea we shall file a demurrer, a copy of which is hereto attached, and a plea in abatement, a copy of which is herewith served, and we shall bring the same on for immediate argument.

G. Elmer McArthur,
Dunham & Cholette,
Attorneys for Respondents.

Dated: February 12th, 1929.

Received a copy of the above and foregoing notice this 14th day of February, 1929.

G. H. Fredericks,
Asst. United States Attorney.

And now come the said Willis T. Gridley and Gladys Wright, in their own proper persons and having heard the said indictment read, defend themselves against said indictment, and for plea do each respectively say:

1. That while the examination into the charges against the said Willis T. Gridley and Gladys Wright were pending before the Grand Jury in the District Court of the United States for the Eastern District, Southern Division, and on, to-wit, January 25, 1928, one Susie Brower, who had then

and there been subpoenaed as a witness on behalf of the government was taken to the door of the grand jury room by Postal Inspector Walters; that at the door they were met by Gregory H. Fredericks, Assistant United States District Attorney, where said witness was introduced to said attorney; that she was then taken into the grand jury room and sworn as a witness on behalf of the government and that she was accompanied into the said grand jury room by said Gregory H. Fredericks and by said Postal Inspector Walters.

2. That during the time said Susie Brower was on the witness stand as such witness and during the time she was giving her testimony, said Postal Inspector Walters remained in the grand jury room and was present in said grand jury room during the deliberations of said grand jury and during the time said Susie Brower was being examined as a witness on behalf of the government and during practically all of the time she was giving her testimony, all of which was an illegal proceeding, the said Walters not being a member of the said Grand Jury.

3. That before being excused as a witness the said Assistant United States District Attorney, Gregory H. Fredericks, used most unusual, forceful and prejudicial language towards said witness; that he accused said witness of perjuring herself, of being a liar and then and there made other statements wholly prejudicial to the rights of respondents and that he then and there ordered said Postal Inspector Walters to take said witness from the grand jury room and take her down to his office.

4. That said Postal Inspector Walters was then and there illegally in the grand jury room and all in violation of the rights of these respondents; that said Postal Inspector Walters started to escort the said witness, Susie Brower, from the grand jury room and as they came through the door in the hall or corridor the said Susie Brower was crying and screaming that she had been accused of perjury and was being taken some place by said officer.

5. That other prejudicial statements and wrongful accusations were made in the presence of said grand jury by said Gregory H. Fredericks, Assistant United States District Attorney; that said Fredericks was not sworn as a witness before said grand jury but made false and exaggerated statements about respondents in the presence of said grand jury; that he used the expressions that respondents were "fakers, grafters, frauds, etc.," that he commented upon a certain banquet given by the Bogardus heirs, so-called, commented upon the cost of said banquet and made other statements of alleged facts before said grand jury, all of which were improper and were illegal proceedings.

6. That the statements and tactics of said Assistant District Attorney were highly prejudicial and coercive and created bias and feeling in the minds of the grand jurors and resulted in the returning of said indictment illegally; that said Assistant District Attorney has from his first acquaintance with this case in 1927 been so biased and prejudiced against respondents that he has been unable to fairly present this cause as is shown by the records and files herein and the affidavits of Cation, Hatt and Kist hereto attached.

7. That one, Lizzie T. Matthews, was also produced and sworn as a witness on behalf of the government; that during the course of her testimony, conduct was indulged in by said Assistant District Attorney in the presence of the grand jury similar to that with Mrs. Brower, as is specifically shown by the affidavit of Lizzie T. Matthews hereto attached; that said Inspector Walters remained in the grand jury room during a large part of the time said witness was testifying and was in the grand jury room when, at the conclusion of the testimony of said Matthews, said Assistant District Attorney ordered said Post Office Inspector Walters to take said witness, Lizzie T. Matthews, out of the room and down to his office, and that said Walters did take her from the court room.

8. That the presence of said Postal Inspector Walters in said grand jury room was in itself an invasion of the rights of these respondents and was of such an illegal nature as to invalidate the indictment aforesaid.

9. That respondents are informed and believe and so charge upon information and belief that the claimed letters alleged to have been taken out of the mail by respondents and to have been mailed through their efforts and agency, upon which said indictment was based, were not as a matter of fact produced before said grand jury and that said grand jury did not have evidence before it establishing the corpus delicti, viz., the mailing of said letters and the letters themselves and that said indictment should, therefore, not have been returned.

10. That the illegal proceedings above mentioned and complained of tended to the injury and prejudice of the respondents in the following particulars; that an indictment was found by said grand jury based upon the illegal proceedings herein set forth and that respondents had been compelled to answer the same and defend themselves and a conviction and sentence under said indictment would deprive each respondent of his or her respective liberty without due process of law, all in contradiction of Section One of the Fourteenth Amendment of the Constitution of the United States of America, and they make a part of this, their plea in abatement, their motion to quash and dismiss said indictment filed in this cause, on to-wit, December 11, 1928, the same having been overruled to to-wit, the 28th day of January, A. D. 1929, together with all supporting affidavits, and they attach hereto and make a part hereof the affidavits of the said witnesses, Susie Brower, Alva A. Becker, William C. Bender, Cora P. Kelley, Isadora Hackett, Lottie Knowles, Vern Kelley, Jennie Storey, Vera Hilsinger, Maggie Honeywell, Edith A. Warn, Harold D. Auten, and many others who saw Postal Inspector Walters come from the grand jury room with the said Susie A. Brower.

And this the said Willis T. Gridley and Gladys Wright are each ready to verify whereof they pray judgment of the said indictment and that the same may be quashed, etc.

Willis T. Gridley.
Gladys Wright.

G. E. McArthur.
Dunham & Cholette.

State of Michigan, County of Kent, ss.

Willis T. Gridley and Gladys Wright, the defendants in the above plea in abatement, being by me each duly sworn, do respectively say that the foregoing plea by each of them subscribed has been read by each of said defendants and that the same is true in substance and matter of fact.

Willis T. Gridley.
Gladys Wright.

Subscribed and sworn to before me this 13 day of February, 1929.

Marian Roon,
Notary Public, Kent County, Mich.
My commission expires April 18, 1931.

CERTIFICATE

I hereby certify that I have principal charge of this cause on behalf of the respondents and that the within and foregoing plea in abatement is not interposed for delay and that in my opinion it is well founded.

G. E. McArthur,
Dunham & Cholette,
John W. Dunham,
Attorneys for Respondents.

County of Wayne, ss.

Susie Brower, being first duly sworn, deposes and says she resides in the City of Detroit, county and state aforesaid, and is the same Susie Brower who was summoned to appear before the United States Grand Jury in the Federal Building, Detroit, Michigan, on to-wit, January 25, 1928.

Deponent says that she was called into the grand jury room by a man whom she afterwards learned to be Mr. Walters, a Post Office Inspector; that as she went up the steps towards the grand jury room she met Mr. Gregory H. Fredericks, Assistant District Attorney, and was introduced to him by Mr. Walters; that she entered the room and was sworn as a witness; that said Postal Inspector Walters went into the grand jury room with deponent and stood in said room with his back against the wall; that deponent believes he walked out upon one occasion, but returned and was in said grand jury room during practically the entire time deponent was giving her testimony and that when Mr. Fredericks ordered her taken from the room as is hereinafter set forth Mr. Walters was at that time in the grand jury room; that Mr. Fredericks began by saying, "You are the secretary of the Detroit Society of the A. J. B.'s?" I said, I had been secretary, but not for some time. I was asked other questions and in response thereto said I had never joined the society, I paid local dues for a time, but that was my own option; that I was secretary through the courtesy of my husband, who belonged to the society. Mr. Fredericks then asked me for what length of time I belonged to the society and I said, "I told you I never belonged to the Society." He replied in a loud voice that I knew what he meant. He also asked what was said when I joined the society, what I was led to believe. I again told him I did not join the society, but that my husband had and had joined it for a book publishing proposition. Mr. Fredericks became mad and said, "Oh, no use of your lying to me, I will have a warrant sworn out and lock you up for perjury." I said, "I am not lying to you and I have my proofs here for everything I want to tell you." He kept including in his questions something about "my joining the society," and when I would say I had not joined the society he would holler and get mad, and he asked me who told me to say it was a book publishing proposition. I told him it was the plan of the organization. When I started to tell him some other things he said, "Shut up, I don't want to hear that." I started to read the pledge to him and he hollered to me again to shut up that he didn't want to hear it. I tried to read the resolution passed in Detroit, signed by Mr. Page, Mr. Price, Mr. Drew and myself and he again said, "Shut up," and that he did not wish to see it. He asked if we didn't think we would get something out of the Trinity Church property. I told him not for a minute, that we wanted the book partly through curiosity and also we felt we would get more from the sale of the book than we would put in. Fredericks asked me more questions and finally asked what we had to show we would ever get the book. He again shouted at me and said the crusade was all bunk and we hadn't a thing to show from Gridley. I was not given a chance to finish what I had to say. Fredericks said among other things that I was a dupe, and I told him that was the first time I knew that. He then said that there was no use trying to examine me, that I was not telling the truth and he would lock me up for perjury. I said, "Mr. Fredericks, I was sworn to tell the truth and that is what I am doing and you are trying to make me lie, and I will not do it." Fredericks then turned and said, "Mr. Walters take her out of here, take her out of here to my office and I will take care of her." A lady sitting on the jury then said, "May I ask her a question?" Mr. Fredericks gruffly said yes, but when I tried to answer he interrupted saying gruffly, "No use, take her out of here." A man on the jury said he would like to ask me a question, but Mr. Fredericks said, "Oh, shut her up, take her out of here and I will attend to her." Before I went out Mr. Fredericks held up a slip of paper and said, "See here, you even tried to prevent the government finding out the truth of the matter." And I replied, "Oh no, I tried to enlighten them, and I have a copy of the letter here I sent to the Post Master General." Mr. Fredericks sneered and scoffed at everything I said. He gave me no opportunity to explain anything to the grand jury. His sole object appeared to be to make me say this was not a book publishing proposition. Mr. Fredericks then said to be in the presence of the grand jury it would not be necessary to pay $500 overhead to Mr. Gridley much longer; when they got through with him it would not be necessary. As I was being taken out of the grand jury room by Mr. Walters, Mr. Fredericks asked if I had any one with me. I said, no I came alone, but there are about a hundred interested people outside. Fredericks then said, "Well, you told Gridley, didn't you?" and I said yes. He then said, "That is enough, that explains how they are here; they are just a lot of illiterates."

Deponent says further that she was greatly excited when Mr. Walters took her ahold of her arm; that she thought she had been arrested for perjury; that she became very excited and as they got about to the door of the grand jury room she believed that she screamed once or twice; that deponent was taken downstairs by Mr. Walters into what she later learned was Mr. Frederick's office. At that time she had some further talk with Mr. Walters; that she was later advised she need not remain, but to go home, but that they might call her back again.

Further deponent saith not.

Susie Brower.

Subscribed and sworn to before me this 9th day of February, A. D. 1929.

W. Montmorency,
Notary Public, Wayne County, Mich.
My commission expires Sept. 11, 1932.

State of Michigan, County of Kent, ss.

Lizzie Matthews being first duly sworn deposes and says that she resides in the City of Ann Arbor, County of Washtenaw, State of Michigan, and is the same Lizzie Matthews who was summoned to appear before the United States Grand Jury with one Susie Brower, in the Federal Building, Detroit, Michigan, on to-wit: January 25th, 1928.

Deponent says that she was waiting in the corridor adjacent to the said Grand Jury room, in the Post Office Building in the City of Detroit on said day while said Susie Brower was testifying before the said grand jury; that while so waiting your deponent with several other interested people was in close proximity to the door leading into the said grand jury room; that someone among the people waiting called deponent's attention and said "They are waiting for you Lizzie" or that in substance, and deponent looked towards the said Grand Jury room and saw Mrs. Brower coming down the stairs in company with Post Office Inspector Walter; that as the said Susie Brower passed your deponent she excitedly exclaimed to your deponent, "Oh Lizzie—They say I lied! That I perjured myself! I am to be arrested for perjury, and I never did! I told the truth and nothing but the truth."

Deponent told the said Susie Brower to keep still, whereupon the Assistant United States District Attorney Gregory H. Frederick, told Post Office Inspector Walter "Take her away! Take her downstairs! And Inspector Walter took the said Susie Brower downstairs.

Deponent went up to the said Grand Jury room, Mr. Frederick preceding her; that when she went into the room Mr. Frederick pointed to a chair and told me to sit there.

The first question Mr. Frederick asked me was did I belong to this organization, to which I answered "Yes."

"You are an officer of this organization?" He asked "I told him I was president of Ann Arbor Toledo and Jackson societies."

Mr. Frederick asked me the object of our organization, and I told him the publication of a family history of the Bogardus; giving the truth of the matter documents and the like. Deponent says that frequently during her answers the said Frederick would interrupt her before she was finished, and say well that all right impatiently, um um yes and put another question to her.

Mr. Frederick then asked deponent if she had seen the documents and papers that were going into the book, and if she had proof that Mr. Gridley had them; deponent answered that the said Gridley had undertaken to do the work of the publication of the book, and naturally he would have those documents and papers, or he would not have undertaken the work.

Said Frederick then asked deponent if the organization had a signed contract to that effect; deponent answered that the organization had their pledge; he then asked deponent if Mr. Gridley had signed that pledge; deponent answered that the members did not consider that necessary; that deponent was pretty positive that when Gridley took the money under that pledge it was quite binding, that any way the members were satisfied; that said Frederick asked your deponent if she didn't have some paper signed by Gridley in regard to what he was to do, whereupon deponent said that they considered their pledge sufficiently binding upon Mr. Gridley.

Frederick asked deponent if she had seen any of the material which Mr. Gridley claimed to have for the book, and deponent answered that she had not; that was Mr. Gridley's business to take care of that.

Some of the jury would at times say that a contract to be binding must be signed by both parties, and that it was not not business, and deponent answered that the pledge was a binding contract, and that if he accepted money under that pledge it certainly bound him, Mr. Gridley, and we so considered it.

Frederick said that Gridley could just take our money and go away and not print the book at all, what would we do, and deponent answered that it would not be very healthy for him to do that; that Mr. Gridley had promised to write that book, that there was a prospectus as to what that book would contain, and that if he did not write that book said Frederick knew what could happen, the jail doors would be open for him.

Deponent says that the said Frederick talked in such a way that he gave deponent to understand that he thought Mr. Gridley was a fraud; that deponent then said to Frederick "Do you mean to say you consider Mr. Gridley a fraud?" One of the jurymen said "Do we think he's a fraud"—and a chorus of the jury answered "We know it."

Frederick then said to your deponent now as to this book proposition that is not what you were organized for really was it—isn't it rather than you are after this property in New York; isn't that what Gridley has promised you, and your deponent answered that such was not the case that they had organized purely to publish their family history, and were giving no thought to the property in New York only so far as it went to make up that family history, and Mr. Gridley had promised nothing but the book, and deponent went on and explained the plans and purposes of the organization in full.

Frederick then asked me how I thought that book could interest the public sufficiently for us to create a fund; deponent said that the book could not fail to sell because it was one of the oldest controversies in this country, and of great interest to the public.

Frederick said to deponent, that if we did not expect to get the property in New York why was it the organization was called Anneke Jans Bogardus? Deponent said because it was the Anneke Jans Bogardus descendants who were interested in the organization, and expected to realize on their investment by capitalizing their story.

Several times Mr. Frederick would interrupt with "No, you don't expect to get the property do you, I don't suppose you would take it if it was given to you." Deponent said she's be foolish if it was offered not to accept.

A large fleshy man who was sitting near Frederick would talk with Frederick, and as I would answer these questions would say to the said Frederick "That's perjury," and he turned to deponent and said "My dear lady do you know what perjury means?" Deponent answered that she thought she did; that she understood it was deliberately telling a falsehood on the witness stand. Deponent says that while this fleshy man did not talk only in an undertone it was perfectly audible to the jury, and he did this several times, and deponent received the impression that it was done for the purpose of intimidating her. Deponent wishes further to say that this was done before she read the paper, to which Mr. Frederick has made reference in his affidavit, and in his statements before the court on the hearing January 28th, 1929.

During the examination Frederick asked your deponent why the organization had chosen Mr. Gridley to write this book; deponent said because we were satisfied that Mr. Gridley knew more than anyone else about the matter—the said Frederick answered your deponent in substance "It takes a crook to catch a crook." Deponent told Frederick she did not quite understand what he meant, and Frederick said, "I guess you understand all right."

Frederick asked your deponent did she know how much money had been raised, and what particular bank Mr. Gridley kept the money, what he had done with it. He asked how much salary Mr. Gridley was getting, and deponent told him that Mr. Gridley and all the officers of the organization had no salary and were paid nothing,

that only Mrs. Wright was paid, the organization secretary. Frederick asked me if I expected people to believe that story, and deponent said that she did not expect anything about it that that was the truth and she supposed the said Frederick wanted the truth, and Frederick told deponent that he did not believe she was telling the truth.

Frederick asked deponent if she knew how much money had been raised, and she said that she could not give him the figures that she would not attempt to give exact figures; that there had been financial reports and summary statements but she could not recollect; whereup the said Frederick told deponent that he believed she was lying.

Frederick continually sneered about the organization and ridiculed it as a business organization. Deponent further says that she cannot remember a single question being put to her about the use of the mails.

Deponent says that during the examination she told Frederick and the jury that she had a statement there which she felt would give them all a clear understanding of the matter, and would explain things to them, and she asked if she would be privileged to read that statement. The said Frederick answered it would depend upon how long the statement was and whether it was a lot of lies like she had been telling on the stand; that he did not think the jury wanted to hear it; that several of the jury said "Let her read it." Frederick then said "How long is it—is it going to take you a long time?" Deponent said that she could read swiftly if it was necessary. Even then Frederick did not want me to read the statement, and some of the jury said "let her read it" and Frederick then said allright that I could.

Deponent started to read the paper, and the said Frederick came over and stood alongside of her looking over her shoulder at what she was reading, and said "Is the rest of that paper a bunch of lies like this is." Deponent told them she had no lies in that paper. Frederick reached over and flipped up the corners of the paper and said, "It's nothing but a bunch of lies anyway—you know you are lying in that paper, and I don't think the jury want to hear it," some of the jury said, "Let her finish the statement" or that in substance, which deponent did.

When deponent was through reading she said to Frederick "Would you like to keep this paper." Frederick answered that he would take it but that it did not amount to anything that it was only a lot of lies.

Frederick asked deponent if she had written that paper or did someone else write it? Deponent answered that she had a stenographer write the paper from her notes, but that she did not type it personally. Frederick asked me who did type it, and deponent asked him if it made any difference—and hesitated. Frederick asked me if I could not answer the question, and deponent answered "Is it necessary for me to tell who typed this for me." Frederick and the jury answered "Yes." Deponent told them it was Mrs. Wright the organization secretary who had typed the statement to whom she had a perfect right to go; that from the time she had had her summons she had started making notes of the things she felt should be put before the grand jury; that she had dictated those notes to Mrs. Wright, and they had been embodied in that statement. Frederick then shouted at me—"I thought so, I just thought so." Frederick said "Why didn't you say that in the first place, why did you lie about it." Deponent told him that she had not lied, that she had said someone else had typed it, but that she did not want to mention Mrs. Wright's name for his conduct had plainly given her to understand that he was biased and prejudiced and that it would only make matters worse for her to mention the name—but that the paper was drawn from her notes and were her own sentiments—and who had I a better right to go to then our organization secretary for that was what we were paying her for.

During the examination Frederick asked me a double barreled question, and deponent tried to answer the first part of the question and the said Frederick fairly roared at deponent answer yes or no, and deponent told the said Frederick that would be impossible, because part of the question required an affirmative answer and the other a negative, that for the said Frederick to ask the questions separately and she would be glad to answer them.

Frederick then stood before the jury and got quite excited and angry, he clenched his fists and threw his arms out, and said "I'm sure I don't know what to do with her I cannot get out of her what I want." He said that deponent's whole testimony was perjury that she had lied all through, and he asked the jury if they knew anything more to do. He took his watch out looked at the time and said it is dinner time and I am hungry.

Post Office Inspector Walter who was in the room was told by Frederick to take me down to his office, and he did so take me, and when I got down to the said office Mrs. Brower was sitting there.

Deponent says that during the time she was testifying before the Grand Jury the said Walter came into the room, but deponent does not know how many times, but distinctly remembers that Walter did not sit down, but stood with his back against the wall.

Deponent did not know at the time who the said Walter was, but found out later when in Frederick's office.

Deponent says that during the examination in the grand jury room Frederick brought up the P. T. Barnum saying there is a fool born every minute and the like, deponent gathering from from his attitude that he wanted the jury to understand that the organization were the suckers and Gridley the Barnum.

Deponent further says that she has read the affidavit of Gregory H. Frederick produced upon the hearing of the motion January 28th, 1929, and it is absolutely false that she ever said to the Grand Jury that she had lied; that Mr. Frederick treated your deponent in a very ungentlemanly manner, was decidedly biased, and that it is impossible to describe in mere words the manner and the attitude of the said Frederick toward your deponent.

Deponent further says that she has read the affidavit of Gregory H. Frederick, filed in the Motion to Quash heard on January 28th, 1929, and that the statement therein that she was "hostile" is wholly without foundation in fact, for the said Frederick asked her all the questions he wanted, and she answered the said questions always courteously, even though the said Frederick asked the same questions over and over again.

Deponent further says that she has read the minutes of the above mentioned hearing, and the statement made therein by the Assistant United States District Attorney that she was allowed to read her statement prepared by Mrs. Wright the organization secretary, without interruptions, is unqualifiedly false. Frederick continually interrupted her with statements that the said paper was a bunch of lies, and things of like substance, and several times the jury would tell him to let me finish the paper.

Deponent says that while Mrs. Brower and herself were held in the office of the United States District Attorney Frederick, Frederick continually gave the impression that they were to be held for perjury, even going to the extent

of asking us if we would return if he let us go out to lunch. The word "perjury" was constantly used to us by the man Frederick during the time we were in his office.

Deponent further recalls that she asked the said Frederick while on the stand before the Grand Jury if he had not received an invitation to the A. J. B. banquet at the Masonic Temple in Detroit, that he should have attended that meeting and he would have found out all about the workings of the organization and what they were doing.

Further deponent sayeth not.

Lizzie L. Matthews.

Subscribed and sworn to before me this 12th day of February, 1929.

Marian Roon,
Notary Public, Kent County, Michigan.
My commission expires April 18, 1931.

State of Michigan, County of Wayne, ss.

Carrie Warfield, being first duly sworn deposes and says that she resides Number 1313 Glover Avenue, in the City of Detroit, County and State aforesaid.

That she was one of about fifty persons waiting in the corridor, adjacent to the Grand Jury room, on the fourth floor of the United States Post Office Building, in the City of Detroit, County and State aforesaid, on the 25th day of January, A. D. 1928, which was the same day Mrs. Henry Matthews and Mrs. Susie Brower were called before the Grand Jury to testify in the above matter.

Your deponent says she is personally acquainted with the same Mrs. Henry Matthews and the same Mrs. Susie Brower mentioned herein and aforesaid.

Deponent says that while she was waiting in the corridor adjacent to the Grand Jury room on the fourth floor of the same Post Office Building herein mentioned and aforesaid, one Postal Inspector Walters appeared and took a seat beside her on a bench which bench in your deponent's opinion is approximately ten feet distance from the door leading into the Grand Jury room.

Deponent says that while she was sitting on the bench Postal Inspector Walter asked her if "she was Mrs. Susie Brower" and your deponent replied, "No sir, I am not—Mrs. Susie Brower has not arrived as yet." To this reply deponent says the Postal Inspector Walters asked her, "Are you sure."

Deponent says Mrs. Susie Brower arrived about fifteen minutes after Postal Inspector Walters had asked her the questions aforesaid and that deponent was there for the express purpose of observing the circumstances as a matter of deponent's personal business interests.

Deponent says to reach the said Grand Jury room it is necessary to go up a few steps to a small platform which platform adjoins the door leading into and from the Grand Jury room.

Deponent says that while waiting her attention was directed to the door of the said Grand Jury room by unusually loud talking at which time she observed Postal Inspector Walters coming through the said Grand Jury room door with Mrs. Susie Brower and that the same Postal Inspector Walters had hold of Mrs. Susie Brower's arm.

Deponent says the said Postal Inspector Walters continued to hold onto Mrs. Susie Brower's arm as they descended from the platform adjacent to the door of the Grand Jury room by means of the few steps connected thereto, and that while the said Susie Brower came down the steps and as she reached the floor level she was crying and exclaimed in a loud tone, "Oh Lizzie, they say I lied, but I didn't—I told the truth and nothing but the truth—they say they are going to arrest me for perjury." Deponent says that at this point she heard a voice from the Grand Jury room say, "Take her down and shut her up." Deponent says there was no one standing on the platform adjacent to the door of the Grand Jury room and that there was no one standing in the doorway leading to the Grand Jury room when she heard the voice within as aforesaid.

Your deponent says she personally saw Postal Inspector Walters go up the few steps onto the platform and into the Grand Jury room some twenty minutes before he came out of the Grand Jury room with Mrs. Susie Brower, and that after entering the Grand Jury room as aforesaid your deponent did not see him come out again until he appeared in the door of the Grand Jury room with the said Mrs. Susie Brower. Deponent says she was sitting on the bench directly in front of the door of the Grand Jury room all of the time that Mrs. Susie Brower was in the Grand Jury room and that Postal Inspector Walters did not go up the steps onto the platform to meet Mrs. Susie Brower as she came out of the Grand Jury room, but that Inspector Walters came through the door of the Grand Jury room onto the platform with Mrs. Susie Brower at the same time Mrs. Susie Brower came out of the Grand Jury room into the corridor, where your deponent and others were standing and sitting.

Deponent says the foregoing is a true and complete statement of her observations and all statements coming within range of her hearing while she was present at the place, on the date, and at the time hereinbefore described.

Further your deponent sayeth not.

Signed Carrie Warfield.

Sworn to and subscribed to before me this 11th day of February, A. D. 1929.

Norman A. Hayes,
Notary Public, Detroit, County of Wayne, Michigan.
My commission expires on the 9th day of December, 1932.
(Notarial Seal)

State of Michigan, County of Wayne, ss.

William G. Lee, being duly sworn, deposes and says:

That he resides at 250 East Columbia Street, in the City of Detroit.

Deponent further says that he is a notary public for the County of Wayne, and State of Michigan, and that his commission expires on October the 11th, 1929.

Deponent further says that on the 27th day of September, A. D. 1928, Thomas Winn came to the Fairbairn Hotel, at 250 East Columbia Street, in the company of Elmer A. McDonald, and George Garvin, and that in his presence the following affidavit:

> "Thomas Winn, being duly sworn, deposes and says that he resides at 1551 Pingree Avenue, Detroit, Michigan, and that he was a member of the Grand Jury empaneled in the District Court of the United States for the Eastern District of Michigan, and that on, to-wit, the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.
>
> Deponent says further that the presentation of evidence to said Grand Jury was in charge of Gregory H. Fredericks, Esquire, Assistant United States District Attorney; that one Susy Brower was sworn as

a witness and during the examination of the said Susy Brower, said Gregory H. Fredericks stated to said witness in the presence of the Grand Jury, in substance, "Shut up, you are lying and perjuring yourself" and that a postal inspector named Walters was sent for; that said Walters came into the Grand Jury rooms during the deliberation and removed said Susy Brower from the Grand Jury room.

Deponent says that he gained the impression from other remarks of said Gregory H. Fredericks that the respondent, Willis T. Gridley, was a faker and a fraud, that people had paid him for writing a book and said Gridley had never delivered the book."

was read to the said Thomas Winn.

Deponent further says that the said Thomas Winn then took the affidavit, looked at it, and signed his name. Whereupon, your deponent asked Thomas Winn if he swore that it was true, and that the said Thomas Winn replied in the affirmative, and that then and at that time, your deponent, William G. Lee, signed the affidavit in his official capacity at notary public for the County of Wayne, and State of Michigan, and attached his seal of office thereof.

And further deponent sayeth not.

William G. Lee.

Subscribed and sworn to before me this 13th day of February, A. D. 1929.

Lillian Stillman.
Notary Public, Wayne County, Michigan.
My commission expires May 9, 1932.
(Notarial Seal)

State of Michigan, County of Kalamazoo, ss.

Alva A. Becker, being first duly sworn deposes and says that he resides at the Township of Kalamazoo, County of Kalamazoo, State of Michigan.

That he was one of about fifty or more A. J. B. descendants waiting in the corridor, adjacent to the grand jury room, third floor of the Post Office Building, in the City of Detroit, on the 25th day of January, 1928, the day Mrs. Henry Matthews and Mrs. Susie Brower were called before the Grand Jury to testify in the above matter; that deponent was in the said corridor in close proximity to the door leading into and from the said grand jury room in the said building, and was there for the purpose of observing the conditions and seeing what was going on; that to get to the said Grand Jury room there are two or three steps up to the above mentioned door.

Deponent further says that while so waiting the door to the said Grand Jury room opened, and he heard a scream, and immediately looked in the direction from whence it came, whereupon he observed Post Office Inspector Walter come through the door from the said grand jury room into the corridor with Mrs. Susie Brower, whom your deponent knew at the time; that as they came through the door into the corridor Mrs. Brower called to Mrs. Matthews and excitedly screamed, "Lizzie, they say I lied! That I perjured myself! I am to be arrested for perjury, and I never did. I told the truth and nothing but the truth." That immediately following Mrs. Brower and said Inspector Walter was another man whom your deponent later learned was Gregory H. Frederick, Assistant United States District Attorney, who immediately stated in a loud voice, from just inside the Grand Jury room, to Walter, in substance, "Shut her up," indicating Mrs. Brower, "get her out of here—take her downstairs," and almost immediately the said Walter took Mrs. Brower from the said corridor and down the stairs. All of the said exclamations and talk was so loud that the Grand Jury inside of the said room could not help but hear it.

Deponent further says that he had been observing the door entering the said Grand Jury room and knows that the said Walter did not step to the door and meet Mrs. Brower as she came out, but that he came through the door with her when it opened; that while he was watching the said door it opened and simultaneously he heard the scream and immediately the said Walter with Mrs. Brower passed from the Grand Jury room into the corridor where your deponent and others were standing.

Alva A. Becker.

Subscribed and sworn to before me, a notary public in and for said county, this 9th day of February, 1929.

Myrtle J. Goemhel,
(Notarial Seal) Notary Public.
My commission expires December 9, 1932.

State of Michigan, County of Jackson, ss.

William C. Bender, being first duly sworn deposes and says that he resides at Jackson, State of Michigan.

That he was one of about fifty or more A. J. B. descendants waiting in the corridor, adjacent to the Grand Jury room, third floor of the Post Office Building, in the City of Detroit, on the 25th day of January, 1928, the day Mrs. Henry Matthews and Mrs. Susie Brower were called before the Grand Jury to testify in the above matter; that deponent was in the said corridor in close proximity to the door leading into and from said Grand Jury room in the said building, and was there for the purpose of observing the conditions and seeing what was going on; that to get to the said Grand Jury room there are two or three steps up to the above mentioned door.

Deponent further says that while so waiting the door to the Grand Jury room opened and he immediately looked in the direction of the door and observed a man whom he afterwards learned to be Post Office Inspector Walter, come through the door from said Grand Jury room into the corridor with Mrs. Susie Brower whom your deponent knew at the time; that as they came through the door into the corridor Mrs. Susie Brower called to Mrs. Matthews and excitedly said in a loud voice "Lizzie, they say I lied—That I perjured my self! I am to be arrested for perjury, and I never did. I told the truth and nothing but the truth!" That immediately following Mrs. Brower and said Inspector Walter was another man whom your deponent later learned was Gregory H. Frederick, Assistant United States District Attorney. Gregory H. Frederick said something to Mr. Walter the substance of which conversation deponent does not remember and almost immediately the said Walter took Mrs. Brower from said corridor and down the stairs.

Deponent further says that he had been observing the door entering the Grand Jury room and knows that the said Walter did not step to the door and meet Mrs. Brower as she came out but that he came through the door with her when it opened. That while watching the door it opened and said Walter and Mrs. Brower passed from the Grand Jury room into the corridor where your deponent was standing.

Dated at Jackson, Michigan, this 9th day of February, A. D. 1929.

William C. Bender.

Mrs. Clarence McCollum,
Witness.

Subscribed and sworn to this 9th day of February, A. D. 1929.

Christie A. Sterns,
Notary Public, Jackson County.

My commission expires 1-28-33.

State of Michigan, County of Genesee, ss.

Vera Hilsinger, being duly sworn, deposes and says that she resides at 139 Hector Street in the City of Flint, Michigan; that she has resided in Flint for about twenty (20) years, and is employed at this time as a saleslady by the Seitner Department Stores.

Deponent further says that on or about the 25th day of January, 1928, she being unable to fix the exact date, she, together with about fifty (50) others of the heirs of Anneke Jans Bogardus, was in the corridor of the Federal Building in the City of Detroit, Wayne County, Michigan, adjacent to the Grand Jury room where the United States Court Grand Jury was taking evidence of witnesses against W. T. Gridley, in reference to the Bogardus case; that she was within a short distance of the door leading to the Grand Jury room; that there are several steps up from said corridor into said Grand Jury room; that she saw Mrs. Susie L. Brower of Detroit, Michigan, led by a man from the Grand Jury room to some other part of the Federal Building; that at said time there was considerable confusion, but this deponent heard Mrs. Brower call to Mrs. Matthews, "Lizzie, they say I lied—I told nothing but the truth." That the man accompanying her made the statement that Mrs. Brower had perjured herself, and she was taken away by another man; that I do not know, of my own knowledge, either Gregory H. Frederick, Assistant United States District Attorney, or Inspector Walter of the United States Post Office Department, but I was advised that one of these men was Mr. Frederick and the other Mr. Walter.

Vera Hilsinger.

Subscribed and sworn to before me this 9th day of February, A. D. 1929.

Irene H. Truran,
Notary Public, Genesee County, Mich.

My commission expires Oct. 30, 1931.

State of Michigan, County of Jackson, ss.

Cora P. Kelley being first duly sworn deposes and says that she resides at Jackson, State of Michigan.

That she was one of about fifty or more A. J. B. descendants waiting in the corridor, adjacent to the Grand Jury room, third floor of the Post Office Building, in the City of Detroit, on the 25th day of January, 1928, the day Mrs. Henry Matthews and Mrs. Susie Brower were called before the Grand Jury to testify in the above matter; that deponent was in said corridor in close proximity to the door leading into and from said Grand Jury room in the said building, and was there for the purpose of observing the conditions and seeing what was going on; that to get to the said Grand Jury room there are two or three steps up to the above mentioned door.

Deponent further says that while so waiting the door to the Grand Jury room opened, and she heard a noise and immediately looked in the direction from whence it came, whereupon she observed a man whom she later learned was Post Office Inspector Walter, come through the door from the said Grand Jury room with Mrs. Susie Brower, whom your deponent knew at the time; that as they came through the door into the corridor Mrs. Brower called to Mrs. Matthews and excitedly said "Lizzie, they say I lied! That I perjured myself! I am to be arrested for perjury, and I never did, I told the truth and nothing but the truth." That in company with Mrs. Brower and said Inspector Walter was another man whom your deponent later learned was Gregory H. Frederick, Assistant United States District Attorney, who immediately stated in a loud voice to Mr. Walter, in substance, "Shut her up" indicating Mrs. Brower, "Get her out of here, take her downstairs," and almost immediately said Walter took Mrs. Brower from the said corridor and down the stairs. All of the said exclamations and talk was so loud that the Grand Jury inside of the said room could have heard her.

Dated at Jackson, Michigan, this 9th day of February, 1929.

Cora P. Kelley.

Mrs. Clarence McCollum,
Witness.

Subscribed and sworn to this 9th day of February, A. D. 1929.

Christie A. Stearns,
Notary Public, Jackson County.

My commission expires Jan. 28, 1933.

State of Michigan, County of Genesee, ss.

Isadora Hackett, being duly sworn, deposes and says that she resides at 1326 Cleveland Avenue in the City of Flint, Genesee County, Michigan; that she has resided in Flint approximately fourteen (14) years, and is the wife of Leon J. Hackett.

Deponent further says that on or about the 25 day of January, 1928, she being unable to fix the exact date, she and her husband, together with about fifty (50) or more of the descendants of Anneke Jans Bogardus were in the corridor of the Federal Building in the City of Detroit, Wayne County, Michigan, at the time the United States Court Grand Jury was sitting taking the evidence of witnesses against W. T. Gridley, in reference to Bogardus' case; that she was within a few feet of the door leading to the Grand Jury room and saw Mrs. Susie L. Brower of Detroit, Michigan, with whom she is personally acquainted, led from the Grand Jury room to some other part of the Federal Building; that she was accompanied by a man whom this deponent did not know, but whom was pointed out to her as Mr. Walters. As they stepped out of the Grand Jury room and were passing through said corridor, the man who accompanied Mrs. Brower said to her, "You have perjured yourself." Mrs. Brower called to Mrs. Matthews, "Lizzie, they say I lied; that I perjured myself, I am to be arrested for perjury, and I never did; I told the truth and nothing but the truth." That said man said, "Shut up! You have said enough." By this time they had passed where I was sitting and I heard no further conversation.

Isadora Hackett.

Subscribed and sworn to before me the 8th day of February, A. D. 1929.

Irene Thomas,
Notary Public, Genesee County, Mich.
My commission expires October 30, 1931.

State of Michigan, County of Jackson, ss.

Lottie Knowles being first duly sworn deposes and says that she resides at Michigan Center, State of Michigan.

That she was one of about fifty or more A. J. B. descendants waiting in the corridor, adjacent to the Grand Jury room, third floor of the Post Office Building, in the City of Detroit, on the 25th day of January, 1928, the day Mrs. Henry Matthews and Mrs. Susie Brower were called before the Grand Jury to testify in the above matter; that deponent was in the said corridor in close proximity to the door leading into and from the said Grand Jury room in the said building, and was there for the purpose of observing the conditions and seeing what was going on; that to get to the said Grand Jury room there are two or three steps up to the above mentioned door.

Deponent further says that while so waiting the door to the Grand Jury room opened and she immediately looked in the direction of the door and observed a man whom she afterwards learned to be Post Office Inspector Walter come through the door from said Grand Jury room into the corridor with Mrs. Susie Brower, whom your deponent knew at the time; that as they came through the door into the corridor Mrs. Susie Brower called to Mrs. Matthews and excitedly said in a loud voice, "Lizzie, they say I lied; that I perjured myself. I am to be arrested for perjury, and I never did. I told the truth and nothing but the truth." That immediately following Mrs. Brower and said Inspector Walter was another man whom your deponent later learned was Gregory H. Frederick, Assistant United States District Attorney. Gregory H. Frederick said something to Mr. Walter the substance of which conversation deponent does not remember and almost immediately the said Walter took Mrs. Brower from said corridor and down the stairs.

Deponent further says that she had been observing the door entering the Grand Jury room and knows that that the said Walter did not step to the door and meet Mrs. Brower as she came out but that he came through the door with her when it opened. That while watching the door it opened and said Walter and Mrs. Brower passed from the Grand Jury room into the corridor where your deponent was standing.

Dated at Jackson, Michigan, this 9th day of February, 1929.

Lottie Knowles.

Mrs. Clarence McCollum,
Witness.

Subscribed and sworn to this 9th day of February, A. D. 1929.

Christie A. Stearns,
Notary Public, Jackson County.
My commission expires Jan. 28, 1933.
(Notarial Seal.)

State of Michigan, County of Jackson, ss.

Verne Kelly, being first duly sworn deposes and says that she resides at Jackson, State of Michigan.

That she was one of about fifty or more A. J. B. descendants waiting in the corridor, adjacent to the Grand Jury room, third floor of the Post Office Building, in the City of Detroit, on the 25th day of January, 1928, the day Mrs. Henry Matthews and Mrs. Susie Brower were called before the Grand Jury to testify in the above matter; and that deponent was in the said corridor in close proximity to the door leading into and from said Grand Jury room in the said building, and was there for the purpose of observing the conditions and seeing what was going on; that to get to the said Grand Jury room there are two or three steps up to the above mentioned door. Deponent further says that while so waiting the door to the Grand Jury room opened and he looked in the direction of the jury room and observed a man, whom he afterward learned was Post Office Inspector Walter come through the door from the jury room and into the corridor with Mrs. Susie Brower, whom he knew at the time. He further says that as soon as she came through the door she said excitedly, "They say I lied, that I committed perjury and I am to be arrested for perjury and I told the truth." That afterwards they stopped in the corridor and a man came up, whom he afterwards heard was Mr. Frederick, United States District Attorney. That Mr. Walters then took Mrs. Brower down stairs and Mr. Frederick took Mrs. Matthews into the jury room. Mr. Frederick said to Walter "Take her down stairs" and Walter then took her by the arm and led her down.

Dated at Jackson, Michigan, this 9th day of February, 1929.

Verne Kelley.

Mrs. Clarence McCollum,
Witness.

Subscribed and sworn to this 9th day of February, A. D. 1929.

Christie A. Stearns,
(Notarial Seal) Notary Public, Jackson County.
My commission expires Jan. 28, 1933.

State of Michigan, County of Jackson, ss.

Jennie Storey being first duly sworn deposes and says that she resides at Jackson, State of Michigan.

That she was one of about fifty or more A. J. B. descendants waiting in the corridor, adjacent to the Grand Jury room, third floor of the Post Office Building, in the City of Detroit, on the 25th day of January, 1928, the day Mrs. Henry Matthews and Mrs. Susie Brower were called before the Grand Jury to testify in the above matter; that deponent was in the said corridor in close proximity to the door leading into and from said Grand Jury room in the said building, and was there for the purpose of observing the conditions and seeing what was going on; that to get to the said Grand Jury room there are two or three steps up to the above mentioned door.

Deponent says that while so waiting in the corridor Mrs. Susie Brower who was a witness before said Grand Jury came from the direction of the Grand Jury room with a man whom she afterwards learned was Post Office Inspector Walter. That when they came into the corridor Mrs. Brower called to Mrs. Lizzie Matthews and said excitedly "They said I lied." They met in the corridor another man whom she afterwards learned was Gregory H. Frederick, Assistant District Attorney for the United States. Post Office Inspector Walter took Mrs. Brower down stairs and

Gregory H. Frederick took Mrs. Matthews into the Grand Jury room.

Jennie Storey.

Dated at Jackson, Michigan, this 9th day of February, 1929.

.....

Witness.

Subscribed and sworn to this 9th day of February, A. D. 1929.

Christie A. Stearns,
Notary Public, Jackson County.

My commission expires Jan. 28, 1933.
(Notarial Seal)

State of Michigan, County of Oakland, ss.

Maggie Honeywell being first duly sworn, deposes and says that she resides at No. 169 Summit Street, City of Pontiac, County of Oakland, and State of Michigan.

That she was one of about fifty or more A. J. B. descendants waiting in the corridor adjacent to the Grand Jury room on the 3rd floor of the Post Office Building in the City of Detroit, Michigan, on the 25th day of January, 1928, the day Mrs. Henry Matthews and Mrs. Susie Brower were called before the Grand Jury to testify in the above matter.

That your Deponent was sitting on a bench in the corridor about forty feet from the door of the Grand Jury room. That while seated there, a man, whom your Deponent has been informed, was Mr. Walters, passed your Deponent in company with Mrs. Susie Brower.

That your Deponent heard Mrs. Susie Brower make the following remark: "I did tell the truth." Your Deponent did not catch what Mr. Walters said, but that Mrs. Susie Brower again said, "I did too, tell the truth." The said Mr. Walters again spoke in a low tone and then said, "Come with me."

Further, your Deponent says not.

Maggie Honeywell,
Deponent.

Subscribed and sworn to before me, this 8th day of February, A. D. 1929.

Ralph T. Keeling,
Notary Public, Oakland County, Mich.

My commission expires Jan. 5, 1931.
(Notarial Seal)

State of Michigan, County of Oakland, ss.

Mrs. Edith A. Warn, being first duly sworn, deposes and says that she resides at No. 37 Florence Avenue, City of Pontiac, County of Oakland, and State of Mich.

That she was one of about fifty or more A. J. B. descendants waiting in the corridor adjacent to the Grand Jury room on the 3rd floor of the Post Office Building in the City of Detroit, Michigan, on the 25th day of January, 1928, the day Mrs. Henry Matthews and Mrs. Susie Brower were called before the Grand Jury to testify in the above matter.

That your Deponent was sitting on a bench in the corridor about forty feet from the door of the Grand Jury room. That while seated there, a man whom your Deponent has been informed was Mr. Walters, passed your Deponent in company with Mrs. Susie Brower.

That your Deponent heard Mrs. Susie Brower make the following remarks: "I did tell the truth." Your Deponent did not catch what Mr. Walters said, but that Mrs. Susie Brower again said, "I did too, tell the truth." The said Mr. Walters again spoke in a low tone and then said, "Come with me."

Further, your Deponent says not.

Edith A. Warn,
Deponent.

Subscribed and sworn to before me, this 8th day of February, A. D. 1929.

Ralph T. Keeling,
Notary Public, Oakland County, Mich.

My commission expires January 5th, 1931.
(Notarial Seal)

State of Michigan, County of Oakland, ss.

Mr. Harold D. Auten, being first duly sworn, deposes and says that he resides at Goodrich, Genesee County, State of Michigan.

That he was one of about fifty or more A. J. B. descendants waiting in the corridor adjacent to the Grand Jury room on the 3rd floor of the Post Office Building in the City of Detroit, Michigan, on the 25th day of January, 1928, the day Mrs. Henry Matthews and Mrs. Susie Brower were called before the Grand Jury to testify in the above matter.

Your Deponent further says that he was watching the door coming from the Grand Jury room practically all the time. That there was nobody on the platform or stairs outside of the Grand Jury room. That your Deponent turned his head and after a moment or two looked back towards the Grand Jury room door and observed a man, whom your Deponent has been informed, was Mr. Walters descending the stairs from the Grand Jury room in the company of Mrs. Susie Brower. That they came on down the steps and passed down the corridor.

Your Deponent further says they appeared to be talking to each other, but there was so much confusion going on that your Deponent did not distinctly hear what they said.

Further, your Deponent says not.

Harold D. Auten,
Deponent.

Subscribed and sworn to before me, this 8th day of February, A. D. 1929.

Ralph T. Keeling,
Notary Public, Oakland County, Mich.

My commission expires January 5th, 1931.
(Notarial Seal)

State of Michigan, County of Genesee, ss.

Leon J. Hackett, being duly sworn, deposes and says that he resides at 1326 Cleveland Avenue in the City of Flint, Genesee County, Michigan; that he has resided in Flint approximately fourteen (14) years, and has worked for the Chevrolet Motor Company during the last twelve (12) years in their garage, as a truck repairer.

Deponent further says that on or about the 25th day of January, 1928 (being unable to fix the exact date) he was in the Federal Building in the City of Detroit, Wayne County, Michigan, at the time the United States Court Grand Jury was sitting taking the evidence of witnesses against Mr. W. T. Gridley in reference to the celebrated Bogardus case. He was in the corridor within a few feet of the door leading to the Grand Jury room, and saw Mrs. Susie L. Brower of Detroit, Michigan, led from the Grand Jury room to some other part of the Federal Building. She

was accompanied by a man from inside the Grand Jury room. As they stepped out of the Grand Jury room I heard the man who accompanied Mrs. Brower say to her: "You have perjured yourself." She replied, "I have told nothing but the truth." He said, "Shut up, you have said enough!" While this conversation was taking place they marched by the place where I was sitting, and I could hear no further conversation. I was told that the man who accompanied Mrs. Brower was either Mr. Frederick or Mr. Walters. I am not acquainted with either of these men, and have no personal knowledge as to their identity.

Leon J. Hackett.

Subscribed and sworn to before me, a notary public in and for Genesee County, Michigan, this 8th day of February, A. D. 1929.

Irene H. Truran,
Notary Public, Genesee County, Mich.
My Commission expires October 30, 1931.

State of Michigan, County of Genesee, ss.

Thomas P. Murray, being duly sworn, deposes and says that he resides at 745 Elizabeth Street in the City of Flint, Michigan. That he is 40 years of age, and has lived in Flint all of his life. That he is employed as an automobile salesman by G. E. Ernest, the local agent for the Hudson Automobile. Deponent further says that on or about the 25th day of January, 1928, he being unable to fix the exact date, he was in the corridor in the Federal Building in the City of Detroit, Wayne County, Michigan, adjacent to the Grand Jury room where the United States Court Grand Jury was taking evidence of witnesses against W. T. Gridley in reference to the celebrated Bogardus case. That he was within a short distance of the door leading to the Grand Jury room. I was there for the purpose of seeing what was taking place and while standing in the corridor saw a man enter the Grand Jury rooms and also saw him come out of the Grand Jury room while Susie S. Brower was being questioned before the Grand Jury, and I also counted the persons who came out of the Grand Jury room when court adjourned about 1:00 P. M.., there being twenty-three. I also learned that the man going in and out of the room, while Mrs. Brower was being questioned, was Mr. Walters.

Thomas P. Murray.

Subscribed and sworn to before me this 11th day of February, A. D. 1929.

Frank F. Serra,
Notary Public, Genesee County, Mich.
My commission expires July 19, 1929.
(Notarial Seal)

State of Michigan, County of Genesee, ss.

Charles M. Graves, being duly sworn, deposes and says that he resides at 622 East Rankin Street in the City of Flint, Michigan. That he has resided in Flint about ten years, and is employed as a machinist by the Buick Motor Company.

Deponent further says that on or about the 25th day of January, 1928, he being unable to fix the exact date, he was in the corridor in the Federal Building in the City of Detroit, Wayne County, Michigan, adjacent to the Grand Jury room where the United States Court Grand Jury was taking evidence of witnesses against W. T. Gridley in reference to the celebrated Bogardus case. That he was within a short distance of the door leading to the Grand Jury room, and saw a man enter the Grand Jury room, and also saw the same man come out of the Grand Jury room while they were investigating Mrs. Brower, which I afterwards learned was Mr. Walters.

Deponent further says that he remained in the corridor on the date of said hearing when Mrs. Brower was examined by the Grand Jury until said hearing adjourned for lunch at about 1:00 of that day, and he counted the persons who left the Grand Jury room at lunch time, and found that there was twenty-three persons leaving that room at that time.

Charles M. Graves,

Subscribed and sworn to before me this 11th day of February, A. D. 1929.

Frank F. Serra,
Notary Public, Genesee County, Mich.
My commission expires July 19, 1929.
(Notarial Seal)

State of Michigan, County of Ingham, ss.

Daisy E. Roen being first duly sworn deposes and says that she resides at 126 So. Fairview Ave., City of Lansing, State of Michigan.

That she was at the Post Office building, in the city of Detroit, in company with a great many A. J. B. descendants and others in the corridor on floor of entrance to Grand Jury room, on January 25th, 1928, the day Mrs. Susie Brower and Mrs. Henry Matthews were called before the Grand Jury to testify in the above matter.

Deponent states that she was approaching the stairs leading to the Grand Jury room and was about ten feet away from said stairs when she was attracted by a scream and looking up noticed Mrs. Brower being escorted from the said Grand Jury room by a man whom she learned later was Post Office Inspector Walters, that Mrs. Brower shouted excitedly in a half crying tone,—"Lizzie, they say I lied, that I perjured myself. I am to be arrested for perjury. I told the truth and nothing but the truth."

Deponent further states that Gregory H. Frederick, Assistant United States District Attorney, came to the door of the Grand Jury room and said in a voice loud enough to be heard by any one in the Grand Jury room, "Shut her up—Take her down stairs, get her out of here."

Deponent further states that she followed Mr. Walters and Mrs. Brower to Mr. Frederick's office where she waited for Mrs. Brower to come out, and that she and her husband accompanied Mrs. Brower to lunch and remembers Mrs. Brower saying that Fredericks said to her, "If I let you go now will you be back at two o'clock?" Deponent gathered from said Frederick's words and actions that Mrs. Brower was under arrest, and that he was doing her a great favor by letting her go out to lunch.

Daisy E. Roen,

Subscribed and sworn to before me this 11th day of February, 1929.

G. E. McArthur,
Notary Public, County of Eaton,
State of Michigan.
My commission expires Nov. 4, 1929.

State of Michigan, County of Ingham, ss.

Gilbert A. Roen being first duly sworn deposed and says

that he resides at 126 South Fairview Ave., City of Lansing, State of Michigan.

That he and a great many others, some A. J. B. descendants and some not, were at the Post Office building in the City of Detroit, State of Michigan, on the 25th day of January, 1928, the day Mrs. Susie Brower and Mrs. Henry Matthews were called before the Grand Jury to testify in the above matter.

Deponent states that he was in close proximity to the stairs leading to the jury room and had been observing the door leading to the jury room for some time. Suddenly the door opened and observed Mrs. Brower and a man who later proved to be Mr. Walters descend the stairs and proceeded down the corridor. As Mrs. Brower observed Mrs. Matthews she stated in a queer voice, "Lizzie, they say I lied, that I perjured myself and I did not. And I am to be arrested for perjury."

Deponent further states that he heard some man tell Mr. Walters to take her out of there—to shut her up. Later learned this man was Gregory H. Frederick, Assistant United States District Atty. and he must have been saying it real loud for deponent states that he is hard of hearing.

Deponent also states that he and his wife accompanied Mrs. Brower to lunch and he gathered from her actions and state of mind a serious injustice must have been done her in that Grand Jury room, for Mrs. Brower is a woman of very even temperament and not easily ruffled, and knows her to be a woman of her word.

Gilbert A. Roen,

Subscribed and sworn to before me this eleventh day of February, 1929.

G. E. McArthur,
Notary Public, County of Eaton,
State of Michigan.

My commission expires Mar. 4, 1929.
(Notarial Seal)

State of Michigan, County of Genesee, ss.

Lettie Blanche Kist, of the City of Flint, in said County and State, first being duly sworn, deposes and says: that she is a member of the Order of the Advocates of Justice for the Descendants of Anneke Jans Bogardus; that she has been interested in the plans and purposes of the said organization, and has interested others in the same.

Deponent further says that upon receiving information that one Gregory H. Fredericks, was giving out information and making statements which to your deponent's knowledge could have no foundation in fact, your deponent decided to interview the said Fredericks, and did call upon the said Fredericks at his office in the Post Office Building, Detroit, Michigan, on Friday, July 22nd, 1927. That one Blee S. Hatt and Charles A. Cation accompanied your deponent to the said Frederick's office.

The said Fredericks was informed that we had come for some information in regard to the Anneke Jans Bogardus affair; that the said Fredericks said "If it is information you are after, you go to the office of the Post Office Inspector and ask for Mr. Walters. He is the man who is investigating this particular case." Your deponent thereupon went to the office of the Post Office Inspector, accompanied by the two above mentioned men and was advised that the said Walters was out of the city, whereupon your deponent returned to the office of the said Gregory H. Fredericks, and informed him of the absence of the said Walters. That the said Fredericks then said "If it is information you are looking for, I can give you some on that subject. That man Gridley is nothing but a fraud and a crook. He has told the members of that organization that he would put out a book; now what good would that book do you people if he did put it out; how could you interest other people in a book of that kind. Of what use would the book be to you." The said Fredericks then made us an illustration of a building across the street stating "Suppose this building across the street was in the same condition as this question, that the man who owned it was beat out of it. He came to you and told you that he had had a book printed that contained all the facts and proofs of how he was beaten out of it—what would you do? You would laugh at him. You know there would be no one who would be sufficiently interested in your book to buy it, certainly not sufficiently to pay $25.00 for it. Now he said "what does Gridley expect to accomplish by publishing this book?" I said "for one thing Public Oponion, and we expect to get a dividend out of the sale of the book." Fredericks replied "Public Opinion eh, and suppose he does change public opinion, what good would that do? Does he figure he can bring on a Revolution?" Further the said Fredericks said "And as for dividends, you would be paying your own dividends, for no one else but you people would buy that book. Would you buy one? I certainly would not, and I do not know that I'd read one if it was given to me, much less pay $25.00 for one."

The said Fredericks further stated "That man Gridley has been working on this matter for twenty years. He started out by bringing lawsuits. He brought seven or eight lawsuits."

The said Charles A. Cation here interrupted with this question "What lawsuits has Gridley brought? I never heard of any lawsuits he had except the Fonda lawsuit." The said Fredericks then repeated the statement about the seven or eight lawsuits, and said the Fonda case was one of them, and that it was in the Fonda matter that the said Gridley was disbarred for being crooked. He further stated that the said Gridley had tried getting money for so many years for lawsuits until he had ran out of them, and that then he came out with the book proposition which was the silliest and most ridiculous thing he had ever heard of. The said Fredericks asked why we had joined the organization and what were we led to believe when we joined it. Your deponent told him that we were led to believe it was a book proposition pure and simple, and that was all we were led to believe. The said Fredericks then told your deponent that she was evidently sold on the proposition, and that her mind could not be changed, whereupon your deponent said that she may be sold on the proposition, but she was not so sold on any proposition but what if she saw she was wrong she could not change her mind. The said Fredericks then said "Think the matter over and come back and talk with our postal inspector. You might enlighten us on some subjects. Come down and see us, it might be possible we could use you."

The said Fredericks further stated to your deponent and the two men above named that Gridley had been collecting the stuff to put in this book some four years, but that he, Fredericks could send to England and also get all the records in the United States to print this book, and accomplish it in three months, complete the book, yes enough to print twenty such books, and he could print a million copies with five thousand dollars, whereas Gridley had collected in some $60,000 to $70,000.

The said Fredericks further stated that the said Gridley was a slick crook; that he never signed any letters or

pamphlets; that if Gridley was straightforward he would sign his letters and let them go through the mail, instead of sending them by express. Your deponent informed the said Fredericks that the correspondence was of such volume that it went by express to each society.

Mr. Hatt then told the said Fredericks that he could not understand why they were making these charges against Mr. Gridley when this man Ethan A. Ennest of Mount Clemens, Michigan, was going around trying to get people to join what he called a Pacific Coast Organization and promising the members who joined a suit; that he was collecting $30.00 a piece for it. Whereupon the said Fredericks said that if the said Ennest was doing that he would be subject to arrest, so Mr. Hatt told him that he certainly was organizing in Michigan, and that he had started an auxiliary in Flint with a Mrs. Iza Bellinger as President.

The said Fredericks further stated that the said Gridley's history was well known that one could go to any law office or library and read about the lawsuits, and the history of the case, as well of Gridley's disbarment; that we could find it any place we had a mind to ask for it, and that as for the proposition and plans of our organization he did not think that anyone with an ounce of brains would fall for it; that while we thought we were going to get a book he could tell us that we never would, for the work had not even been started on it, and that it was simply a scheme by Gridley to bleed the people.

Mr. Hatt reminded Mr. Fredericks that he could if he had anything on Mr. Gridley take him; that if it was crooked, and Gridley was crooked he should stop Gridley, whereupon the said Fredericks said "Oh we'll get him—the Post Office authorities will get him they are investigating the matter."

The said Fredericks further stated that the said Gridley did not use the mail that he turned the work over to his private secretary and she took care of it for him. Mr. Hatt told Mr. Fredericks that she was not Gridley's secretary she was the secretary of the organization and paid by them.

Your deponent handed the said Fredericks an Appeal for Justice, a pamphlet which is being distributed by the organization, whereupon the said Fredericks said "Oh, that thing, I've got one of them; that's the one with the photostat copies of the letters he claimed were opened in the mails; that he would not even give it the time to read it.

Mr. Charles A. Cation asked the said Fredericks in the presence of your deponent in the discussion of the said Gridley's disbarment, if it was not a fact that they had bought the evidence upon which to disbar the said Gridley. The said Fredericks answered "No, they could not do that, if they did such a thing what kind of a country would we have?"

Further deponent sayeth not.

Lettie B. Kist.

Subscribed and sworn to before me this 4th day of August, 1927.

Edna C. Cation,
Notary Public, Genesee County.

My commission expires Dec. 6th, 1929.
(Notarial Seal)

State of Michigan, County of Wayne, ss.

William G. Lee, being duly sworn, deposes and says:

That he resides at 250 East Columbia Street, in the City of Detroit.

Deponent further says that he is a notary public for the County of Wayne, and State of Michigan, and that his commission expires on October the 11th, 1929.

He further deposes and says that on the first day of December, A. D., 1928, he went to the home of Bernard Wendell, at 6157 Fisher Avenue, Detroit, Michigan, in the company of Elmer A. McDonald, and George Garvin, and that the following affidavit:

> "Bernard Wendell being duly sworn deposes and says that he resides at 6157 Fisher Avenue, Detroit, Michigan, and says that he was a member of the Grand Jury impaneled in the District Court of the United States for the Eastern District of Michigan, and that on to-wit the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.
>
> Deponent says that during the presentation of evidence before said Grand Jury and while said Grand Jury was deliberating, Gregory H. Fredericks, Assistant United States Attorney of the District, did while one Susy Brower was on the witness stand, did so in the presence of the Grand Jury state to Mrs. Brower that she was a liar and was perjuring herself.
>
> Deponent says further that a large amount of evidence was submitted to Grand Jury but that no letters signed by the respondent, Gridley, were produced upon which the indictment was based."

was read to the said Bernard Wendell, and presented to him and signed.

Deponent further says that the said Bernard Wendell took the affidavit, looked at it, signed his name, and swore that it was the truth. Whereupon, your deponent signed his name, William G. Lee, in his official capacity as Notary Public for the County of Wayne, and State of Michigan, and attached his seal and office thereof.

Further deponent sayeth not.

William G. Lee.

Subscribed and sworn to before me this 13th day of February, A. D., 1929.

Lillian Stillman,
Notary Public, Wayne County, Mich.

My commission expires May 9, 1932.
(Notarial Seal)

State of Michigan, County of Wayne, ss.

George Garvin, being duly sworn, deposes and says:

That he resides at 3315 Wabash Street, in the City of Detroit, State of Michigan, and that on the 27th day of September, A. D., 1928, he was at the Fairbairn Hotel, located at 250 East Columbia Street, in the City of Detroit.

He further deposes and says that he was in the company of one Elmer A. McDonald, and William G. Lee, Notary Public, for the County of Wayne, and State of Michigan, and Thomas Winn.

He further deposes and says that the said McDonald read to the said Thomas Winn the following affidavit:

> "Thomas Winn, being duly sworn, deposes and says that he resides at 1551 Pingree Avenue, Detroit, Michigan, and that he was a member of the Grand Jury impaneled in the District Court of the United States for the Eastern District of Michigan, and that on, to-wit, the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.

Deponent says further that the presentation of evidence to said Grand Jury was in charge of Gregory H. Fredericks, Esquire, Assistant United States District Attorney; that one Susy Brower was sworn as a witness and during the examination of said Susy Brower, said Gregory H. Fredericks stated to said witness in the presence of the Grand Jury, in substance, "shut up, you are lying and perjuring yourself," and that a postal inspector named Walters was sent for; that said Walters came into the Grand Jury rooms during the deliberation and removed said Susy Brower from the Grand Jury room.

Deponent say that he gained the impression from other remarks of said Gregory H. Fredericks that the respondent, Willis T. Gridley, was a faker and a fraud that people had paid for writing a book and said Gridley had never delivered the book."

and then presented same to Thomas Winn, who took it, looked at it, and signed his name.

He further deposes and says that the said aforementioned William G. Lee, a notary public for the County of Wayne, and State of Michigan, then asked the said Thomas Winn if he had read the contents and if he swore that they were true and the said Thomas Winn answered in the affirmative.

Further deponent sayeth not.

George A. Garvin,

Subscribed and sworn to before me this 11th day of February, A. D., 1929.

Lillian Stillman,
Notary Public, Wayne County, Mich.
My commission expires May 9, 1932.
(Notarial Seal)

State of Michigan, County of Wayne, ss.

George Garvin, being duly sworn, deposes and says:

That he resides at 3515 Wabash Street, in the City of Detroit, State of Michigan.

That on the third day of September, A. D., 1928, he went to the home of Fred J. Whines at 5708 Forsyth St., in the City of Detroit.

He further deposes and says that he was accompanied by William G. Lee, a notary public in and for the County of Wayne, and State of Michigan, and one Elmer A. McDonald.

He further deposes and says that the said McDonald read and presented to the said aforementioned Fred J. Whines an affidavit setting forth as follows:

"Fred J. Whines, being duly sworn, deposes and that he resides at 5708 Forsyth Street, Detroit, Michigan, and says that he was a member of the Grand Jury impaneled in the District Court of the United States for the Eastern District of Michigan, and that on, to-wit, the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.

Deponent says that during the presentation of evidence before said Grand Jury and while said Grand Jury was deliberating, Gregory H. Fredericks, Assistant United States District Attorney, sent for a man named Walters, whom deponent later learned is a postal inspector and had Mrs. Susy Brower, a witness, escorted from the room in the custody of said postal inspector and that deponent received the impression that she had been arrested for perjury, and later received the impression that she had changed her testimony.

That he does not recall seeing any letters signed by either of the respondents offered in evidence or presented before said Grand Jury and that the letters upon which the indictments was based were not produced in evidence before said Grand Jury."

And he further deposes and says that the said Fred J. Whines then took the affidavit, looked at it, signed his name and swore that it was true. Whereupon, Will G. Lee, the said aforementioned notary public, for the County of Wayne, and State of Michigan, attached his signature.

And further deponent sayeth not.

George A. Garvin.

Subscribed and sworn to before me this 11th day of February, A. D. 1929.

Lillian Stillman,
Notary Public, Wayne County, Mich.
My commission expires May 9, 1932.
(Notarial Seal)

State of Michigan, County of Wayne, ss.

William G. Lee, being duly sworn, deposes and says:

That he resides at 250 East Columbia Street, in the City of Detroit.

Deponent further says that he is a notary public for the County of Wayne, and State of Michigan, and that his commission expires on October the 11th, 1929.

He further deposes and says that on the third day of September, A. D., 1928, he went to the home of Fred J. Whines at 5708 Forsyth Street, Detroit, Michigan, in the company of Elmer A. MacDonald, and George Garvin, and that the following affidavit:

"Fred J. Whines, being duly sworn, deposes and says that he resides at 5708 Forsyth Street, Detroit, Michigan, and says that he was a member of the Grand Jury impaneled in the District Court of the United States for the Eastern District of Michigan, and that on, to-wit, the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.

Deponent says that during the presentation of evidence before said Grand Jury and while said Grand Jury was deliberating, Gregory H. Fredericks, Assistant United States District Attorney, sent for a man named Walters, whom deponent later learned is a postal inspector and had Mrs. Susy Brower, a witness, escorted from the room in the custody of said postal inspector and that deponent received the impression that she had been arrested for perjury and later received the impression that she had changed her testimony.

That he does not recall seeing any letters signed by either of the respondents offered in evidence or presented before said Grand Jury and that the letters upon which the indictment was based were not produced in evidence before said Grand Jury."

was read to the said Fred J. Whines and presented to him and signed.

Deponent further says that the said Fred J. Whines took the affidavit, looked at it, signed his name, and swore that it was the truth. Whereupon, your deponent signed his

name, William G. Lee, in his official capacity as notary public for the County of Wayne, and State of Michigan, and attached his seal and office thereof.

Further deponent sayeth not.

William G. Lee,

Subscribed and sworn to before me this 13th day of February, A. D. 1929.

Lillian Stillman,
Notary Public, Wayne County, Mich.
My commission expires May 9, 1932.
(Notary Seal)

State of Michigan, County of Genesee, ss.

Blee S. Hatt, of the City of Flint, in said County and State, first being duly sworn deposes and says that he is a member of the order of the Advocates of Justice for the descendants of Anneke Jans Bogardus; that he is interested in the plans and purposes of the organization, and in the character and integrity of one, W. T. Gridley.

Deponent further says that on Friday, July 22nd, 1927, Charles A. Cation, Mrs. L. B. Kist and this deponent went to Detroit, Mich., and called on Gregory H. Fredericks, in his office in the Post Office Building, City of Detroit, Mich., and we told him that we came for some information in regard to the Anneke Jans Bogardus affair, and he said if it is information you are after go to the office of the Post Office Inspector and ask for Mr. Walters, he is the man who is investigating this particular case, and on reaching his office was informed that he was out of the city and that they did not know when he would return; so we returned to the said Fredericks office and told him that we had been informed that Walters was out of the City, and he then said that if we were looking for information he could give us some on that subject; yes, he said, Mr. Gridley was a crook and a fraud; that he had told the members that he would put out a book, and asked what good would the book be to you if he did put it out; why would other people be interested in a book of that kind; suppose he does change public opinion, does he think he would bring about a revolution; He has already collected in money to the amount of $60,000. to $70,000. enough to print twenty such books; he never will print it and never intended to print it. At which Mr. Cation said, that is what we are here for; we have joined the organization and paid money in; and if there is nothing to it we did not want to pay more money into it. Mr. Fredericks said that Mr. Gridley was just bleeding the people, and would so long as he could get them to believe in him. He said Gridley does not sign any letters or pamphlets, that if he was straightforward he would sign his letters and let them go through. I then asked him if this is going along and you know it and know him to be crooked why don't you stop him. Fredericks then said, we'll get him, the Post Office Authorities will get him; I am handling the case, but the Inspector is picking up the dope on him. He then asked why we joined the organization, and did we expect to get anything out of it; we told him yes, we would get something out of it, dividend out of the sale of the book; he said you will be paying your own dividends, for no one else but your own people would buy the book; no one would buy a book of some one else's history; that does not interest them; you would not buy them and I would not; I don't know that I would even read one if it were given to me, saying nothing about buying one and paying $25.00 for it.

He also said that Gridley had been working on this for twenty years; that he had started with law suits and had had seven or eight; Mr. Cation said, he had never heard of any low suits but the Fonda suit, and Fredericks said that was one of them, the one in which he was disbarred for being crooked; then he said that he had tried it for so many years with law suits and that he had run out of law suits, then he came out with this book proposition, and that it was the silliest, most ridiculous thing that he had ever heard of. Then Mr. Chas. Cation asked him, wasn't it a fact that they had bought the evidence to disbar him, and he said why no, they could not do that, if they did what kind of a country would we have. I thereupon asked about Ennest taking up the matter of the Pacific Coast organization and charging $30.00, and he said that he did not know what Ennest was doing, but that if he was doing anything like that he was subject to arrest also. I told him that Ennest was organizing, that he had an auxiliary in Flint and that a Mrs. Bellinger there was president; He asked us to think the matter over, and if we would like he would have Mr. Walters, the Post Office Inspector go over to Flint to see us, or that if we would rather we could come down to Detroit to see him there at any time. Mrs. Kist handed him the Appeal for Justice and asked him if he would please take time to read it, and he said, "Oh! that thing, I have a whole bundle of them, but I would not take the time to read it; that is the one with the photostat of the letters Gridley claims has been opened." He said that Gridley was a sleek crook, and if he wasn't why did he not send his letters through, instead of sending them by express. Mrs. Kist said that it was because of the large amount of matter, he sent them to the societies by express instead. He said he has been four years picking up this propaganda to put in the book. He said he could go to England and get all the records in the United States and put in this book and have it completed in three months time, and that he has collected from $60,000 to $70,000, enough to print 20 such books, and that he could print a million such for $5,000. He said that anyone could go to any law office or library and read all about these law suits and the history of the case and Gridley's disbarment; he said that he did not know how any one with an ounce of brains would fall for such a plan. He said suppose this building across the street was owned by some one who had been beat out of it, and he came to you and wanted you to buy a book that contained all the proofs of it and wanted you to pay $25. for it what good would it do. He spoke of Mr. Gridley's secretary doing the writing, upon which I told him it was our secretary, that we paid the salary, and that we hired her.

Blee S. Hatt.

Subscribed and sworn to before me this 27th day of July, 1927.

John F. Baker,
Notary Public, Genesee County, Mich.
My commission expires June 30, 1931.
(Notarial Seal)

State of Michigan, County of Genesee, ss.

Charles A. Cation, of the City of Flint, in said County and state, first being duly sworn deposes and says that he is a member of the order of the Advocates of Justice for the Descendants of Anneke Jans Bogardus; that he has attended a number of the meetings, held to consider the plans and purposes of the order and also the character and ability of our leader, one W. T. Gridley.

Deponent further says that on Friday, July 22nd, 1927,

L. B. Kist and Blee S. Hatt, and this deponent went to Detroit, Mich., and called upon Gregory H. Fredericks, at his office in the Post Office Building, Detroit, Mich., we told him that we came for some information relative to the Anneke Jans Bogardus affair, he said if it is information you are after to go to the office of the Post Office Inspector, and ask for Mr. Walters, he is the man who is investigating this particular case, and on reaching his office was informed that he was out of the city and they did not know when he would return, so we returned to said Fredericks office and advised him that we had been informed that Mr. Walters was out of the city. He then said that if we were looking for information he could give us some on that subject. Yes, he said that Mr. Gridley was a crook and a fraud, and had told the members that he would put out a book; what good would the book be to you if he did put it out he said; why would other people be interested in a book of that kind; suppose he does change public opinion, does he think he will bring on a revolution; he has already collected in the neighborhood of $60,000. to $70,000. enough to print 20 such books; he will never print it, never intended to print it; at which deponent said that is what we are here for; we have joined the organization and paid in money, and if there is nothing to it we do not want to pay more money into it. Mr. Fredericks said that Gridley was just bleeding the people, and would as long as he could make them believe in him. Gridley does not sign any papers, letters or pamphlets, but if he was straightforward why would he not sign his own letters, papers or pamphlets, instead of turning them over to his secretary; upon which Mr. Hatt said he has no secretary, she is our secretary as we pay her for her work. He said further if this is going along and you know him to be crooked why don't you stop Gridley. Frederick said we'll get him; the post office authorities will get him; I am handling the case, but the inspector gets the dope for me. He then asked why we joined the organization and what we were led to believe, and did we expect to get anything out of it; we told him yes, we will get something out of it, the dividend out of the sale of our book; he said you will be paying your own dividends for no one else but your own people would buy the book; no one would buy a book of some one else's history; that does not interest them; you would not buy them and I would not. I don't know that I would even read one if it were given me, saying nothing about buying one and paying $25.00 for it. He also said that Gridley had been working on this for 20 years; that he had started with law suits and had seven or eight, upon which deponent said, I never heard of law suits but the Fonda law suit, and he said that it was one of them, the one he was disbarred for being crooked; then he said that he had tried it for so many years with law suits, and that he had run out of law suits, then he came out with this book proposition and that it was the silliest, most ridiculous thing he had ever heard of. Then deponent asked him, was it not a fact that they bought the evidence to disbar him, and he said why no, they could not do that, if they did what kind of a country would we have? Mr. Hatt asked about Mr. Ennest taking up the matter of the Pacific Coast Organization and charging $30.00; he said he did not know what Ennest was doing but if he was doing anything like that he was subject to arrest also. Mr. Hatt told him that Mr. Ennest was organizing and that he had an auxiliary in Flint with Mrs. Bellinger as president. He asked us to think the matter over and if we would he would have Mr. Walters the P. O. inspector go over to Flint and see us there at any time, at this time asking us to leave our names, which we refused to do. Mrs. L. B. Kist handed him the Appeal for Justice and asked him if he would please take time to read it, and he said, Oh! that thing, I have a whole bundle of them, but I wouldn't even take the time to read it, that is the one with the photostat with the letters Gridley claims had been opened. He said that Gridley was a sleek crook; if he isn't why does he send his letters by express, to which Mrs. Kist replied that they were sent in such amounts that they were sent by express to each society; he said let me tell you something, he has been four years picking up this propaganda to put in this book and I could go to England and get all the records in the United States, to put in this book in three months to have it completed, and he has collected in from $60,000. to $70,000. enough to print 20 such books, and I could print a million copies for $5,000. He said you can go to any law office or any library and read about those law suits and the history of this case and Gridley's disbarment, find it most any place you might ask for it. He said that he did not know how any one with an ounce of brains would fall for such a plan. He made an illustration of the building across the street, supposing this building across the street, the man who had owned it had been beaten out of it, he came to you and told you he had the book that contained all the proof, and wanted you to buy it for $25.00, what would you do? You would laugh at him. There is no person who would be interested in it sufficiently to pay $25.00 to go into it. He also said that Gridley had not even started work on the book, we said that we thought we would get a book and we thought it would sell, and he said, well I know you are never going to get a book, and it has never even been started, and while we talked for some time he kept repeating the same thing over and over again.

Further deponent sayeth not.

C. A. Cation,

Subscribed and sworn to before me this 7th day of July, 1927.

John F. Baker,
Notary Public, Genesee County, Mich.
My commission expires June 30, 1931.
(Notarial Seal)

AFFIDAVIT

State of Michigan, County of Wayne, ss.

Elmer A. McDonald, being duly sworn, deposes and says: That he resides at the Fairbairn Hotel, 250 East Columbia Street, in the City of Detroit, State of Michigan, and that on the 27th day of September, A. D. 1928, he was at the Fairbairn Hotel, located at 250 East Columbia Street, in the City of Detroit.

He further deposes and says that he was in the company of one, George Garvin, and William G. Lee, Notary Public, for the County of Wayne, and State of Michigan, and Thomas Winn.

He further deposes and says that this deponent read to the said Thomas Winn the following affidavit:

> "Thomas Winn, being duly sworn, deposes and says that he resides at 1551 Pingree Avenue, Detroit, Michigan, and that he was a member of the Grand Jury impaneled in the District Court of the United States for the Eastern District of Michigan, and that on, to-wit, the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.
>
> Deponent says further that the presentation of evidence to said Grand Jury was in charge of Gregory H.

Fredericks, Esquire, Assistant United States District Attorney, that one Susy Brower was sworn as a witness and during the examination of said Susy Brower, said Gregory H. Fredericks stated to said witness in the presence of the Grand Jury, in substance, "Shut up, you are lying and perjuring yourself," and that a postal inspector named Walters was sent for; that said Walters came into the Grand Jury room during the deliberation and removed said Susy Brower from the Grand Jury room.

Deponent says that he gained the impression from other remarks of said Gregory H. Fredericks that the respondent, Willis T. Gridley, was a faker and a fraud, that people had paid him for writing a book and said Gridley had never delivered the book."

and then presented same to Thomas Winn, who took it, looked at it, and signed his name.

He further deposes and says that the said aforementioned William G. Lee, a Notary Public for the County of Wayne, and State of Michigan, then asked the said Thomas Winn if he had read the contents and if he swore that they were true and the said Thomas Winn answered in the affirmative.

Further deponent sayeth not.

Elmer A. McDonald.

Subscribed and sworn to before me this 13th day of February, A. D. 1929.

Lillian Stillman,
Notary Public, Wayne County, Mich.
My commission expires May 9, 1932.
(Notary Seal)

AFFIDAVIT

State of Michigan, County of Wayne, ss.

Elmer A. McDonald, being duly sworn, deposes and says: That he resides at the Fairbairn Hotel, 250 East Columbia Street, in the City of Detroit, State of Mich.

He further deposes and says that on the first day of December, A. D. 1928, he went to the home of Bernard Wendell, at 6157 Fisher Avenue, Detroit, Michigan, in the company of William G. Lee, a Notary Public, in and for the County of Wayne, and State of Michigan, and George Garvin, and that the following affidavit:

"Bernard Wendell being duly sworn deposes and says that he resides at 6157 Fisher Avenue, Detroit, Michigan, and says that he was a member of the Grand Jury impaneled in the District Court of the United States for the Eastern District of Michigan, and that on to-wit the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.

Deponent says that during the presentation of evidence before said Grand Jury and while said Grand Jury was deliberating, Gregory H. Fredericks, assistant United States Attorney of the District, did while one Susy Brower was on the witness stand, did so in the presence of the Grand Jury state to Mrs. Brower that she was a liar and was perjuring herself.

Deponent says further that a large amount of evidence was submitted to Grand Jury but that no letters signed by the respondent, Gridley, were produced nor were the letters produced upon which the indictment was based."

was read to the said Bernard Wendell, and presented to him and signed.

Deponent further says that the said Bernard Wendell took the affidavit, looked at it, signed his name, and swore that it was the truth. Whereupon, William G. Lee, in his official capacity as notary public for the County of Wayne, and State of Michigan, signed as such and attached his seal and office thereof.

Further deponent sayeth not.

Elmer A. McDonald.

Subscribed and sworn to before me this 13th day of February, A. D. 1929.

Lillian Stillman,
Notary Public, Wayne County, Mich.
My commission expires: May 7, 1932.
(Notary Seal)

AFFIDAVIT

State of Michigan, County of Wayne, ss.

Elmer A. McDonald, being duly sworn, deposes and says: That he resides at the Hotel Fairbairn, 250 East Columbia Street, in the City of Detroit, State of Mich.

That on the third day of September, A. D. 1928, he went to the home of Fred J. Whines at 5708 Forsyth Street, in the City of Detroit.

He further deposes and says that he was accompanied by William G. Lee, a notary public in and for the County of Wayne, and State of Michigan, and George Garvin.

He further deposes and says that this deponent read and presented to the said aforementioned Fred J. Whines an affidavit setting forth as follows:

"Fred J. Whines, being duly sworn, deposes and says that he resides at 5708 Forsyth Street, Detroit, Michigan, and says that he was a member of the Grand Jury impaneled in the District Court of the United States, for the Eastern District of Michigan, and that on, to-wit, the 2nd day of March, 1928, said Grand Jury found and returned an indictment against Willis T. Gridley and Gladys Wright.

Deponent says that during the presentation of evidence before said Grand Jury and while said Grand Jury was deliberating, Gregory H. Fredericks, Assistant United States District Attorney, sent for a man named Walters whom deponent later learned is a postal inspector and had Mrs. Susy Brower, a witness, escorted from the room in the custody of said postal inspector and that deponent received the impression that she had been arrested for perjury and later received the impression that she had changed her testimony.

That he does not recall seeing any letters signed by either of the respondents offered in evidence or presented before said Grand Jury and that the letters upon which the indictment was based were not produced in evidence before said Grand Jury."

And he further deposes and says that the said Fred J. Whines then took the affidavit, looked at it, signed his name and swore that it was true. Whereupon, William G. Lee, the said aforementioned notary public, for the County of Wayne, and State of Michigan, attached his signature.

And further deponent sayeth not.

Elmer A. McDonald.

Subscribed and sworn to before me this 13th day of February, A. D. 1929.

Lillian Stillman,
Notary Public, Wayne County, Mich.
My commission expires: May 7, 1932.
(Notarial Seal)

ORDER DENYING MOTION TO WITHDRAW PLEA AND FILE PLEA IN ABATEMENT

(Entered February 18, 1929—Tuttle, J.)

In this cause defendants' motion to withdraw plea and file plea in abatement having been duly noticed and coming on for hearing on this day is argued by attorneys for respective parties, and the court being fully advised in the premises do now here order that said motion be, and the same is hereby denied.

DEMURRER TO INDICTMENT

(Filed February 14, 1929)

Now come the defendants, Willis T. Gridley and Gladys Wright, and say that the indictment and the matters therein contained in manner and form, as the same are stated and set forth, are not sufficient in law and that they, said Willis T. Gridley and Gladys Wright, are not bound by the law of the land to answer the same for the following reasons:

1. Said indictment does not state facts sufficient to constitute a public offense.
2. Said indictment is general, indefinite and uncertain, in this that the same as amplified by the Bill of Particulars heretofore served, does not state whether the person or persons mailing said letters suffered loss in any manner nor what the reading or contents of said letters were nor what information, if any the same may have contained or set forth nor if said letters pertained or related in any manner to the alleged scheme to defraud mentioned in said indictment.
3. That said indictment does not sufficiently set out any scheme to defraud.
4. It does not set forth the particulars of any scheme to defraud.
5. It does not set forth who, if anyone, respondents intended to defraud.
6. It does not show to whom any false or fraudulent representations were made.
7. It does not set forth nor state the amount of money, if any, respondents may have received, said indictment merely stating "large sums of money."
8. That said indictment does not allege how said scheme was to be executed.
9. It does not set forth any acts of trickery, deception or gullibility.
10. It does not show what associations were consulted nor when and where said false representations were made to any such associations.
11. It does not show who the members of said associations were or whether said associations were voluntary associations, partnerships or corporations.
12. It does not give the names of the officers of said association or give any information as to where the membership lists and other records of such associations might be obtained.
13. It does not state what associations were to contribute or pay any money to respondents.
14. It does not state what, if any, sums of money have been paid or who may have paid the same.
15. It does not set forth or charge any overt acts.
16. Because the allegations of false representations all relate to future events and contingencies rather than to facts.
17. It does not set forth what representations made by respondents were false and fraudulent nor in what particulars the same were false and fraudulent.
18. It does not set forth nor charge the exact nature of the language or acts by which the suspicion and distrust was created as mentioned in the ninth paragraph of the first count of said indictment.
19. Because it appears upon the face of the indictment amplified by the alleged Bill of Particulars that the letters upon which the indictment is based are not in existence and a prosecution can not be maintained upon secondary evidence of the same.
20. It does not show that the letters therein mentioned were caused to be mailed or were received by respondents in furtherance of any scheme to defraud.
21. It does not show or charge the said letters were caused to be mailed or were received by respondents with fraudulent intent.

Wherefor for want of sufficient indictment, the said Willis T. Gridley and Gladys Wright pray judgment and that they may be dismissed and discharged by the court from the said premises in the said indictment specified.

G. E. McArthur,
Dunham & Cholette,
John M. Dunham,
Attorneys for Defendants.

CERTIFICATE

I hereby certify that I have principal charge of this cause on behalf of the respondents and that the within and foregoing demurrer is not interposed for delay and that in my opinion it is well founded.

G. E. McArthur,
Dunham & Cholette,
John M. Dunham,
Attorneys for Respondents.

NOTICE OF HEARING

(Filed Feb. 14th, 1929)

To John R. Watkins, United States Attorney for the Eastern District of Michigan, Southern Division:

You Will Please Take Notice that attached hereto is a copy of demurrer which defendants propose to file in said cause and on permission being granted they will file the same and will bring the same on for hearing and argument before Honorable Arthur J. Tuttle, Judge of said court, on Monday, the 18th day of February, 1929, at 11:00 A. M., or as soon thereafter as counsel can be heard.

Dated: February 12th, 1929.

G. Elmer McArthur,
Dunham & Cholette,
Attorneys for Respondents.

Received a copy of the above and foregoing notice this 14th day of February, A. D. 1929.

G. H. Frederick,
Asst. United States Attorney.

ORDER OVERRULING DEMURRER

(Entered February 18, 1929—By Tuttle, J)

In this cause defendants' demurrer to the indictment herein having been duly noticed and coming on for hearing on this day, is argued by attorneys for respective parties and the court being fully advised in the premises do now here order that said demurrer be, and the same is hereby overruled.

EXCEPTION TO ORDER OVERRULING MOTION TO WITHDRAW PLEA

(Filed February 18, 1929)

Now comes Willis T. Gridley and Gladys Wright, the above named respondents, by their attorneys, and except to the order of the Court made on, to-wit the 18th day of February, A. D. 1929, denying the motion of said respondents to be allowed to withdraw the plea heretofore entered by direction of the Court and to permit them to file a plea in abatement theretofore tendered as follows:

(1) They except to the refusal of the Court to permit the withdrawal of the said plea, the same being a matter of right and the order of the Court being erroneous as a matter of law.

(2) They except to the Court's refusal to permit the filing of a plea in abatement and proper consideration of the same by the Court, the matters therein set forth having been presented as soon as practicable after the said facts became known to respondents.

(3) They except to the refusal of the Court to sustain said plea and dismiss said cause for the reason that the showing made that the privacy of the jury room was invaded is not disputed.

(4) They except further to the order made, the same being erroneous as a matter of law, unfair, and unjust to respondents and prejudical to their rights.

G. E. McArthur,
Dunham & Cholette,
Jefferies & Krause.

Grand Jurors

Miss Pearl Prentice, 350 West Huron St., Pontiac, Mich.
Mr. Charles A. Dubuar, Northville, Michigan.
Bernard Wendell, 6157 Fisher Avenue, Detroit, Mich.
Fred G. Whines, 5708 Forsyth Street, Detroit, Mich.
Thomas Winn, 1551 Pingree Street, Detroit, Mich.
Bennett Root, Manchester, Michigan.
Herman Rosenthal, 293 Elliot Street, Detroit, Mich.
Charles Roberts, 3442 Hamilton Street, Detroit, Mich.
Harriet Champlin, 1551 Monterey Street, Detroit, Mich.
Walter A. Fisher, 2683 Webb Street, Detroit, Mich.
David A. Green, Pontiac, Mich.
Alice Guterberg, 3824 Philips Avenue, Detroit, Mich.
Mrs. Myrta Hutchins, Denton, Michigan.
Pearl A. Jones, 126 Seward Avenue, Detroit, Mich.
Della Kilburn, 1509 Glynn Court, Detroit, Mich.
Margaret Millen, 1711 Webb Street, Detroit, Mich.
Edward O'Donnell, 4063 Carter Ave., Detroit, Mich.
Mrs. Florence Signor, Ypsilanti, Michigan.
Stephen Tredway, Farmington, Michigan.
Gladys Wendt, Plymouth, Michigan.
Daniel Zeigin, 209 N. Bowen St., Jackson, Mich.

These are the tried and true men and women of Michigan, summoned to serve on this Grand Jury, from November, 1927, to March, 1928, some four months or over, sworn by their oath to an impartial consideration, cool judgment and honest investigation of the matters brought before them; supposed to apply their business ingenuity, common knowledge, and ordinary every day horse sense, with reference to known requirements and prerequisites, to a recovery of property in the possession of another. The functions of our courts.

Can these grand jurors explain their own discernment that this alleged scheme was fraudulent, and then lend credibility to the testimony of these witnesses, all intelligent men and women, that they had followed such alleged scheme for three years, without discovering that it was a fraud?

Does this not establish that this was never a part of the plans and purposes of the organization, and was deliberately tacked on to an honest, legitimate book-publishing proposition.

By whom was this manufactured?

Did this grand jury take any means to ascertain why these apparently intelligent witnesses took three years to find out this alleged fraud?

These grand jurors must have known, as everyone knows, from their own court experience, there is only one legally constituted department of the government that can decree recovery of property held by another, to wit: our courts.

What puzzles me is how such men as Roat, the Mayor of Kingston, Leo C. Tefft, retired farmer of Leslie, Michigan, and real estate operator; Jones, a man about forty-five years of age, seemingly intelligent; Ethel Kelsey, an employee in the office of the Consumers Power Company for several years; Tomkins, special representative for transportation lines; Isabel Turner, a school teacher; Hannah Grow Lutz, a woman over forty years of age, high school graduate, before marriage a business woman; Iza Bellinger, a school teacher; take them all, every one of them down the line, all clever, intelligent people, and, as I say, it puzzles me to understand how these twenty-three men and women, possessed of all their faculties, were hoodwinked by these witnesses into believing that any such alleged statement, if ever made, would not have been detected by them at once as fraudulent; therefore, their duty as jurymen would have compelled them to ask, why these people followed up such alleged scheme for three years before taking action?

Imagine! They actually sold this Grand Jury on the proposition that Gridley had represented himself equal to the Diety himself, in that he had promised them what no mortal man could do, a "could and would" recovery.

Did this Grand Jury investigate to ascertain if these people were sound in mind?

Did this Grand Jury investigate to ascertain whether any of these witnesses knew for what our courts are instituted?

Did this Grand Jury investigate to ascertain if any of these witnesses had been in a lawsuit, and if so, did they wait until the jury returned to find out whether they were licked or not?

Can you conceive of such a condition, that this body of men and women, being apprised of the existence of an organization of some fifteen hundred people in Michigan alone, never demanded the membership papers of that organization, or a substantial representation of its membership, to appear before them; never demanded of the post office inspector, who testified before them, and who called upon hundreds of these satisfied members, the results of his investigation.

Men and women, tried and true grand jurors, under oath, sitting in judgment on their fellowman, with his life and liberty balanced in their hands, allowed two members of the organization to be treated before it, as these two ladies, members of the organization, whose affidavits are in the previous pages. Imagine! Shouted at! Told to shut up! Called liars! And one of them taken out of the jury room, supposedly under arrest for perjury; and not one of these people, sworn to conduct an impartial investigation of this matter, raised their voices to put that District Attorney in his place. And that is called a strict, impartial, cool, non-partisan investigation of the matters brought before it. May God in His infinite mercy deliver the rest of mankind from such cool and impartial investigations!

Think of it, when two of their own body asked Mrs. Brower questions, and the district attorney interfered with her answering by hustling her out of the room in the loving care and custody of Walter, the post office inspector, those two people, even, would not protest that they wanted their questions answered before she was taken out; one of them telling her it were best that she should go along.

Aye, the picture is graphically portrayed in those affidavits. Imagine the conditions! With this district attorney dancing before them, afraid that the two ladies would say too much in favor of the defendants, doing all in his power to discount their testimony, they have the front to tell us that this investigation was conducted as they were sworn by their oath to conduct it, in the manner prescribed by law; according to the rules of evidence; that the district attorney adhered strictly to that rule; and that this was a "True" bill.

Look at those affidavits!

Frederick, the assistant district attorney states, that the witnesses Brower and Matthews were apparently interested and hostile witnesses, and that he treated them in no other manner than he has treated other interested and hostile witnesses on many occasions in this court. If this is true, if it is, then I think it is a matter for some judicial determination as to how far the prosecutor may go in examining a witness. Are there any rules of evidence? What is the limit?

Think, I am up on contempt charges for calling a witness a d—— liar and this selfsame attorney is prosecuting me for making that statement in court. If it was wrong for me, was it right for him? Do you believe his affidavit is true or false?

Fred G. Whines deposed, among other things, "That the said Gregory H. Frederick did not treat said witnesses Brower and Matthews in any other manner than an attorney "could and would" treat an apparently hostile and interested witness, as this deponent has seen and heard attorneys treat such witnesses in open court. That there was no undue pressure or intimidation used to cause said witnesses to testify falsely."

Bernard Wendell, deposed to the same thing, except undue pressure.

Thomas Winn, deposed the same as Whines, same words;

Bennett C. Root, the same as Whines, in the same words;

David A. Green, the same as Whines, and same words;

Mrs. Harriet Champlin, same as Whines, and in the same words;

Gladys T. Wendt, same as Whines, and exactly the same words;

Pearl A. Jones, same as Whines, the same words;

Stephen A. Tredway, deposed the same as Whines, and in the same words;

Mrs. Myrta Hutchings, deposed the same as Whines, and in the same words;

Mrs. Florence Signor, the same as Whines, and in the same words;

Alice M. Gutenberg, deposed the same as Whines, and in the same words;

Charles D. Roberts, deposed the same as Whines, and in the same words;

Charles L. Dubuar, the foreman of the Grand Jury, deposed the same as regards these witnesses, and in the same words.

And you are to understand thereby, that all these grand jurors do not know that the purpose of a Grand Jury is to inquire into and investigate, and not prosecute, and that the purpose of the admittance of a district attorney into the Grand Jury room is to interrogate witnesses; that there is no such thing as a "hostile" witness in the Grand Jury proceedings, or at least there should not be; and this admission coming from the district attorney, and these jurors, establishes from their own mouths, that my rights had no protection or respect, and that these Grand Jurors have not the slightest idea of the duties and purposes of a Grand Jury.

Question: Read the Brower and Matthews affidavits, and take the statement in the affidavits of these grand jurors —"treated no different than apparently interested and hostile witnesses would be treated in open court." Were those affidavits true or false? Do you believe any impartial uninfluenced court would ever permit it?

Do you believe this Grand Jury had their minds open to learn the truth, or were their minds fixed?

Defendant had to await information as to what occurred in the Grand Jury room, via the investigation being conducted by the organization, and think of the expense an accused must be capable of meeting under these conditions!

This disclosed that there was evidence presented that there had been contributed by the organization $200,000. A purely mythical statement, no proofs, and unqualifiedly false. This organization has not raised that amount of money.

This story was changed to $100,000.

Floundering around, manufacturing any stories to engage the attention of these grand jurors. But, I ask you, did these jurors do what their oath requires? Did they investigate? Did they ask whether there were any expenses connected with the organization, which were to come out of the funds contributed? Were any disbursements made in the prosecution of the plans of the organization? Out of the money raised was nothing done by way of completing any work for the organization? Did all this money go into this man's pocket?

The first three, Roat, Jones and Tefft, would have been compelled to testify, if they did not commit perjury, that during the time I was with the National I was not given sufficient funds to prosecute the work for which I was engaged; this wasted a year.

The balance of the witnesses, if they did not commit perjury, would have had to testify that up to the time their financial statements were stopped by resolution, they had monthly statements showing expenditures for books, maps, records, purely research books, nothing more or less; so that if it was not a book publishing proposition, the time for them to take me to task was when the first financial statement was received, showing expenditures for material which could only be used for a book.

It was reported that these financial statements were produced before the Grand Jury. Do you believe they were?

In the face of the fact that those statements showed disbursements for publication work, could this Grand Jury have returned a true bill, charging defendants with the crime of promising bunk, for the privilege of expending the money passing through their hands?

These very statements showed the collection of $28,000 plus, and an expenditure of $26,000 plus, and all the expenditures were classified, so that the jury, if their intelligence was working, must have known that the expenditures were made palpably in furtherance of some publication, and not for the purpose of anything else.

In the face of the testimony of the two witnesses, members of the organization, was it not their duty, in conducting an impartial investigation, to demand the calling of other members of the organization (interested and hostile of course) and learn whether they all would testify as did Mrs. Matthews and Mrs. Brower, or whether they would agree with the testimony of the disgruntled and demitted members of the organization; whether they would portray themselves as so foolish, for hire or otherwise, that they did not know the difference between writing a book and the recovery of property on what was to be in the book; did not know that the author could have no jurisdiction over any recoveries no matter what was in the book; did not know the difference between having a note and securing payment of the note, and what would be necessary to force payment of a note.

The ridiculous charges made against defendant must have been apparent to these jurors, they must know that the retaining of a lawyer to bring a case, does not spell in the king's English that they "would" recover, and every lawyer would be out of business if it did imply some guarantee.

These men and women witnesses before the Grand Jury had been around courts; they had suits of their own, and I charge that no man on God's green earth can claim that he does not know no man can promise him a "recovery;" that is never known until the verdict of the jury, or the judgment of the court is announced.

I charge these witnesses were hired to fill up the gap, and supply the allegation that something was promised besides the book. No investigation here. There must be a promise no one could fulfill, and they made it something so damned ridiculous that even a twelve-year-old school boy could not have been taken in by it.

Hence I charge that this Grand Jury never attempted to apply known conditions, their own knowledge, that they never attempted to give defendants that which upon their oaths they promised to give, a full, square, unbiased, unprejudiced, unfixed investigation, all with open minds; but like marionettes, jumped when Frederick pulled the string.

When the witnesses Brower and Matthews testified that this matter was purely a book publishing proposition, did these grand jurors investigate to ascertain the truth of the matter?

Did they interrogate Frederick and call upon him for all written evidence in his possession? Certainly not, for had they done so I feel sure this indictment would never have been returned, for Frederick had sufficient printed matter in his possession to have precluded the return of this indictment.

Did this Grand Jury seek any information as to what arrangements existed between the organization and myself? Palpably not, for they would have discovered that I had given those people gratis, not the three or six months within which to raise the finances to publish this book, but that, on account of their troubles and delays, I had given them five years of my life. Does this spell crook?

Apropos of the fairmindedness of this Grand Jury, when one of the lady members was in the Grand Jury room testifying, and spoke of my good character, she heard a juror say that Mr. Gridley was a fraud. She asked "Fraud? Do you think he is a fraud?" Did this Grand Jury answer in chorus "Fraud? We know he is a fraud!"

Upon this trial, through the testimony of Roat and Jones, who were witnesses before this Grand Jury, it developed that they did not participate in the making of the arrangements with me; that attorney Grover was sent to make those arrangements, and that all they knew about the matter was what Grover reported and the checks for the overhead. Did this Grand Jury compel the presence of Mr. Grover? No. Was Roat's and Jones' testimony competent?

Was any competent evidence produced before the Grand Jury as to these arrangements? On the hypothesis that Jones testified before the Grand Jury as he did upon this trial; on the hypothesis that Roat testified before the Grand Jury as he did upon the trial there was no competent evidence before the Grand Jury upon which to base their accusations in the first charge of that indictment:

"That these individuals came in contact with the defendants Willis T. Gridley and Gladys Wright, and were informed by the said Willis T. Gridley and Gladys Wright that they possessed and had access to information and evidence which would prove conclusively the heirs' title to said property, and that by means of this information and evidence the said heirs of Anneke Jans Bogardus could and would recover the title to said property."

If there was no competent proof given before the Grand Jury to warrant this charge, was that charge false? Did this Grand Jury certify to that charge under these circumstances?

Who prepared that paper—that indictment containing such allegation in the absence of having called attorney Grover—the man who represented them and made the arrangements? The one and only man competent to testify upon that question.

Before they could certify to that indictment the Grand Jury were compelled to ask, "How did you come in contact with these defendants?"

The Charges

This true bill of indictment, presented by the grand jurors on their oath, will be found in the appendix number eleven.

There are six separate counts in the indictment.

The first three for receiving, receiving, receiving, letters —three separate letters.

The last three for having caused the aforesaid letters to be mailed.

There was no evidence introduced upon the trial showing these letters or copies thereof. They charge these letters contained drafts for money. The only one for a substantial amount was a draft for the proceeds collected by the Detroit Society from the advance book subscriptions over a period of about twelve months. Each society was to hold the funds collected upon their advance book subscriptions until at least 1,000 advance book subscriptions had been taken.

The amount of this draft was between two and three thousand dollars.

As the evidence will disclose, on February 2nd, 1925, I produced Savings Bank books showing $11,000.00 on hand,

which would more than cover the estimated cost of printing the original four hundred and eighty page book.

It was put up to the state meeting in Detroit, February 2nd, 1925, to determine whether they would increase the book to enable me to print all the materials which I had accumulated, and those I wanted to accumulate, that I deemed important for this book, or whether we should just print the book of four hundred and eighty pages, for which the funds on hand were sufficient.

The organization itself voted to enlarge the book, and to raise the additional funds required, by the advance book subscription plan, in lieu of an assessment, and that pending the sale of at least one thousand books, the moneys collected could be held in their local treasuries.

The evidence discloses that this particular draft mentioned previously for two to three thousand dollars was advanced book subscription money held by the government witness Price, as treasurer of the Detroit Society; that he objected to forwarding these funds to me, to be used to defray the expenses of going ahead with the book; that finally the Detroit Society passed a resolution directing him to forward these moneys.

This is in evidence in this case, and notwithstanding that fact I am guilty of having caused, of having caused, of having caused the letter containing this draft to be sent to me—guilty in the Courts of the United States of America!

The publication of this book was a scheme! It was a fraudulent scheme, and the method used to make it fraudulent was the production of less than a dozen erstwhile members, who claim that the book when published would contain the proofs that "could and would" get them the New York property. Not "could or would" but "could and would."

I present in haec verba the graveman in this indictment with respect to the alleged charge of fraud:

a. That these individuals came in contact with the defendants Willis T. Gridley and Gladys Wright and were informed by the said Willis T. Gridley and Gladys Wright that they possessed and had access to information and evidence which would prove conclusively the heirs' title to said property, and that by means of this information and evidence the said heirs of Anneke Jans Bogardus could and would recover the title to said property. Which representations by the said Willis T. Gridley were false and fraudulent.

b. And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they, the said Willis T. Gridley and Gladys Wright would cause the aforesaid association to pay them large sums of money for the work that they, the said Willis T. Gridley and Gladys Wright were to perform in the obtaining of information and evidence establishing the title of the aforesaid heirs to the aforesaid property.

c. And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they, the said Willis T. Gridley and Gladys Wright would obtain the control, management and dominion of the association aforesaid, and would by trickery, deception and imposing upon the good faith, honesty and guillibility of the members thereof, as the occasion demanded, change the plans and methods of operation of the said associations.

d. And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would [3] not do any of the things they promised to do at various meetings of the aforesaid associations held in the aforementioned Cities, but on the contrary would continue to beguile, deceive and defraud the members of the aforesaid associations.

e. And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would appropriate to their own use certain large sums of money which had been entrusted to them for a definite purpose.

f. And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would deliberately create suspicion and distrust among the members of said association against each other, so that in the event that any member of said associations should question any action of said defendants their action in so questioning could be considered as disloyalty.

Advance Subscription Blank

Detroit Society

To The Advocates of Justice
For the Descendants of Anneke Jans Bogardus:

No.....

Please enter my advance subscription for one volume (price $25.00) of the W. T. Gridley book, as described in your prospectus, and I herewith remit, $25.00 in full payment (or $5.00 as first monthly payment) of said subscription. Please forward this subscription to Mr. Gridley in order that I may secure a low number of this book.

Dated 27 day of April 1925.

John W Page
(Address) 1238 Coplin ave
Detroit Mich

Send this application to:
JOHN W. PAGE
1238 Coplin Avenue
Detroit, Mich.

(SEE OTHER SIDE)

TRINITY
BREAK YE MY COMMANDMENTS?

Plate Fifty-three

You, no doubt, have heard a great deal about the Bogardus controversy with Trinity Church, over the farm originally granted to ANNEKE JANS BOGARDUS in 1636, by the first Dutch Governor, which grant was later confirmed unto her children by the first English Governor, and must recognize the great financial and political force which the descendants of ANNEKE JANS BOGARDUS have had to combat in this long controversy. You can, therefore, appreciate the stupendous disadvantages with which we have had to contend. If you have read the articles in the newspapers and periodicals, you can understand the difficulties, particularly financial, which have beset us. FORTITUDE! PERSEVERANCE! DETERMINATION! The talismanic words which our forefathers have handed down to us, keep alive the abiding faith that when our story, the facts, are presented to those imbued with the spirit of true Americanism "Fair play" they will join our banner, and we shall no longer look for support for our contention that this dispute should be settled in the open, without regard to Judicial determination heretofore had or made by Trinity or Episcopalian Judges; that the facts, the records, the certified proofs, should be presented in their true colors to the liberty-loving, God-fearing men and women of these blessed United States. What we want is not alone financial aid, but the moral suasion of those who esteem it a sacred trust, aye a duty, to uphold and defend the foundation principles of equal right and justice, the cornerstone of our Republic, against destructionists, who would seek to substitute for that cornerstone, the Power of the Almighty Dollar. We are, by this means, earnestly appealing for your help, for your support, in the hope that you will join this band of BOGARDUS ENDEAVORERS in their efforts to get PUBLIC OPINION back of this BOGARDUS WAR; that we may present our publication to the world, showing the grounds for the express determination on our part, not to give up, until we have been able to submit our grievances to the fairest tribunal in the world— THE CITIZENS OF THESE UNITED STATES, and we likewise appeal for your aid to prevent the seemingly secret espoinage over those who are now giving their labors to the publication of this book.

The interested parties do not want the facts contained in the W. T. Gridley book to be used for the purpose of bringing suit; therefore, we, the descendants of Anneke Jans Bogardus, appeal to you to keep the contents of this book within the confines of your immediate household for the space of one year, or until the plans of our organization have been fulfilled.

In appealing for your moral and financial aid in publishing this book, we ask that you subscribe, not alone for yourself, but that you will in turn help us to the extent of enlisting at least three of your friends. By applying to the person named on the reverse side of this sheet, additional subscription blanks and announcements will be gladly and gratefully furnished.

(See other side)

CHAPTER SEVEN

Public Talks on Reasons for Consenting to Publish the Book

After my disbarment I went into a metal manufacturing business. I had become resigned to my lot, and was happily situated. I was in this business some five years, when a committee from the Wilkes-Barre organization waited upon me for the purpose of asking my help.

Pardon my digressing from the subject of the book, but as my business was injected into the trial of this matter, I feel it incumbent upon me to explain, that this business was conducted in a manufacturing loft of an area of about five thousand square feet. The whole space was open and everything on the floor visible to the naked eye. Twenty-five hundred square feet was taken up by the machinery; the balance of the space, except about twenty-five feet for an enclosed office, was taken up with shipping department, and the storage of goods.

I speak of this because of the character of the testimony given in regard to this business by Roat, Jones and Tefft, and the remarks of the Judge with reference to the manufacturing space being called a "loft."

Lofts are spaces in which is done probably seventy-five per cent of the manufacturing business in New York, and many of the largest buildings there are known as manufacturing lofts.

THEY ARE NOT HAY LOFTS, and I think many will wonder why such a comparison was made.

To revert to the subject of the interview of the committee without going into detail. One factor with respect to the arrangements was that I was to write this book at night, so as not to interfere with my business, and that my name would not be used to raise funds; that I should write no letters; that there should be but one intermediary, Thomas Grover, their attorney.

It was not until August and September, 1923, after a lapse of some nine months, when I was asked to go to Pennsylvania and Michigan, to explain the purpose and reasons for consenting to publish this book, I learned that the solemn pledge that had been made to me to keep my name secret had been violated; I learned that the Wilkes-Barre organization were raising funds under promise of law suits, which discovery, with other reasons, led to my immediate withdrawal of my connections with that organization.

This experience cost me in the neighborhood of one thousand dollars, as the following statement, which was prepared and circulated at the time, will disclose. (See plate fifty-three-A.)

In taking up this work certain charges were agreed upon; that they should pay the rent of a place to install my library then in crates; they made their own arrangements for the stenographic work at so much per week; in short, the various items of fixed expenditures were ascertained, and in that way the agreed overhead was arranged; though not until the intermediary had reported back to Wilkes-Barre, and signified to me their agreement therewith.

It is the recollection of government witnesses, after a lapse of five years, that makes necessary the publication of some of my public talks to these people, at divers places referred to in their testimony.

Those dated in 1923 refer to a period prior to my withdrawal and termination of all relations with the Wilkes-Barre organization.

MASSIE v. FRUIT GROWERS EXPRESS COMPANY, 31 F (2d) 463 Morris, District Judge:

Five witnesses, testifying more than five years after the event, fix the date upon which a car was first equipped with racks connected by the Downey Hinge as February, or late January, 1923. The only aids to their memory are the recollection that the equipment of the car with the hinge was within a short time, a week or ten days, after the inspection of the racks in the yard. And a further recollection that it was before the completion of a certain car shed that was finished between the middle and the 25th of February, 1923. I do not question the honesty of a single one of these witnesses. Yet, before a court is permitted to find a prior public use it must be satisfied "By evidence so cogent as to leave no reasonable doubt in the mind of the court that the transaction occurred substantially as stated." Deering v. Winona Harvester Works, 155 U. S. 286, 301, 15 S. Ct. 118, 124 (39 L. Ed. 153). Human memory is far from infallible. In the matter of dates experience has found it especially imperfect. Brooks v. Sacks, 81 F. 403 (C.C.A.1,) McArthur v. Sears, 21 Wend. (N. Y.) 190, 192; Goble v. Grant, 3 N. J. Eq. 629, 633. Other things being equal, the clarity and certainty of memory with respect to an occurrence vary with its recency. It is well known that memory frequently tends to confuse the dates and relative times of the happening of similar or related events. To require the unaided memory to fix with absolute precision the particular month, in which a certain event took place, more than five years past, imposes upon it a task for which it is seldom equipped.

Lenape Park, Pa., August, 1923.

PRELIMINARY

I want to first assure you — my dear friends — of my appreciation of this opportunity given me — to meet you face to face — and to give you a short talk about this wonderful work you have undertaken — I shall try, to the best of my ability to give you a clearer understanding of that word ————

First and foremost — I want to thank you for the honor you have bestowed upon me — in being chosen as your leader — a position — while surrounded and weighed down with hard work and study — is, nevertheless — one of the most interesting and soul-satisfying labors I have ever been called upon to perform —

I feel the more gratified to be your leader — when I consider that it is in a cause that has outlived the setbacks of over two centuries — that has been handed down from one generation to another — a cause that, seemingly, will not die — because inspired by the voices of your forefathers — reaching out to you from the great beyond — with the command that this cause must live until the wrong is righted and restitution is made ————

Expenses for books typewriter etc. per agreement			
April...	$400.00		
May 18th	325.00		
May 31st	135.00		
July 3rd	127.50		
July 9th	59.50		
July 23rd	127.50		1174.50
Special expenses since June 9th, for which vouchers have been furnished to Mr. G.M.Roat.....			338.98
Expenses for which vouchers have not been furnished:-			
August 20th Express to Wilkes Barre		.37	
21st Telephone to Wilkes Barre		2.30	
23rd " " " "		1.00	
24th Searcher for week's salary		25.00	
24th Telephone to Kingston		1.30	
24 - 25 Expenses to West Chester, Pa.		17.15	
28th Express to Wilkes Barre		.37	
Sept. 1st Searcher for week		25.00	
3rd Telephone to Wilkes Barre		1.10	
4th Additional charges on long distance messages per telephone bill.....		4.90	
Express charges to Wilkes Barre		.37	
5th Telephone to Kingston		2.00	
Telephone to Kingston		1.10	
Telephone to Kingston		1.30	
5th to 9th Expenses to Michigan		202.80	
8th Searcher for one week		25.00	
15th " " " "		25.00	
20th Newspapers for article		.40	
23rd Searcher for one week		25.00	
29th Searcher for one week		25.00	
Oct. 4th Telephone to Wilkes Barre		1.30	
4th Express to Jones		.37	
6th Searcher for one week		25.00	
13th Searcher for one week		25.00	458.03
			1950.89
Arrangements were made with me in November at $500. per mo. before your convention of Dec.8th - hence 11 mos would be a total of.....			5500.00
			$ 7450.89
Amounts received per above arrangements			
Dec. 26th.....	250.00		
Jan. 24th	250.00		
Feb. 13th	250.00		
Feb. 24th	350.00		
Mar. 8th	400000		
Apr. 4th	500.00		
May 3rd	500.00		
May 25th	500.00		
July 18th	500.00		
Aug. 3rd	500.00		
Sept. 5th	150.00		
Sept. 19th	300.00	4350.00	
Money furnished per agreement to buy books, typewriter etc.		935.00	
Special expense account per resolution of June 9th.....		1033.00	
		$ 6317.00	
Amount received in toto.....			6317.00
			1133.89

This $500.00 per month was for general expenses, and it was distinctly understood by your National Committee that for this amount no accounting was to be made; it being understood it was to cover certain fixed ~~xxxxxx~~ expenses, including rent etc. which I would have to meet if I went back into the work; all of which was thoroughly explained to your representative at the time the arrangement was consummated.

Involving, as it does — an issue which strikes home to the wellbeing of every citizen of our land — springing out of the very earliest and primitive period of the history of our country — fostered and nurtured during that period of English rule — which our forefathers at a great sacrifice of life and blood, intended to shake off for all time — the history of this despoiling of the children of Anneke Jans — this oppression of this worthy Dutch family — shall — with the help of the Almighty God — and the stout and strong hearts of those of our newly formed order, cemented together by that common bond of sympathy Justice for all — be proclaimed from one end of this land to the other ——

FACTS

No doubt all you good people are familiar with the fundamental facts — either acquired — or handed down to you by your parents — but I think it necessary to refer to some of them here —

Your ancestor — Anneke Jans — who was one of the most — nay, I will say she is now, through this controversy, the most famous of the early pioneers — braved the dangers of the mighty deep — which in those times of primitive conveyances for ocean travel — tested and tried the strength and courage of even the staunchest of men — and landed in New Netherlands — with her husband Roeloff Jansen — determined to make for themselves and their children — a place in this new world — Roeloff Jansen worked for Killean Van Renssaeller — and through his influence obtained from Governor Van Twiller — the Dutch Governor — a grant of some 62 acres of land in New Netherlands — now known as Manhattan Island ————

After the death of Roeloff Jansen — his widow, Anneke Jans, married the Reverend Everardus Bogardus —After the death of Reverend Everardus Bogardus — she obtained a confirmation grant in 1654 from the then Dutch Governor Stuyvesant — Anneke Jans died in 1663 — leaving behind her seven children — and two grandchildren — As a part of the Treaty of Surrender — made in 1664 between the Dutch and the English — the Dutch titles were to be respected — and the land owners were to continue in the possession and enjoyment of their holdings ———

Some three years later — and in 1667 — the then English Governor, Nicolls — confirmed these prior grants unto the children of Anneke Jans Bogardus — They therefore — became unquestionably the owners of this property — under English Rule ————

At that time — and for some thirty years thereafter — this church was not known or established in this country ————

You no doubt know — that it is claimed that Trinity acquired the Bogardus Farm as a part of the King's Farm — under her so-called Queen Anne grant — Hence — my good people — I want you to bear in mind the fact that this church was not established until thirty years after the confirmation of the Bogardus tract to the children of Anneke Jans Bogardus ————

Bear in mind also — that within practically four years after the death of Anneke Jans — and after a period of three years from the time the English succeeded the Dutch — this first English Governor — Governor Nicolls — confirmed unto the children of Anneke Jans — this tract of land — That then there was no Duke's Farm — King's Farm — or Queen's Farm — That during the time the Dutch ruled Manhattan — known then as New Netherlands — there was what was known as the Dutch West Indies Company — They owned what was known in New Netherlands as — company's farms or boweries — and they were designated as numbers 1, 2, 3, 4, and so on — Now please remember the different farms — because we have the company's farms under the Dutch rule — and we have at the self same time the Bogardus Farm or tract — two separate and distinct pieces or farms — and the English when they took possession of Manhattan Island well knew this condition of affairs — They well knew that the Bogardus tract was not a part of the company's farm or bowery — for they — within three years after they took possession of Manhattan — confirmed the grants unto the children of Anneke Jans Bogardus. Therefore — the confiscation of the company's farms by the English — could not possibly have been construed to carry or take in the Bogardus tract — because as the records show they were separate and distinct parcels or farms — do I make this point clear?

The treaty of surrender — between the Dutch and the English — safeguarded the titles and rights of the inhabitants to the lands then owned by them — and when later — the crown made a grant to the Duke of York of the uninhabited part of the Netherlands — this confiscated Dutch West India Company Farm became known as the "Duke's farm" ————

Hence by no process of legitimate reasoning — could it be said that when first that farm was designated as the "Duke's Farm" it included the Bogardus tract — for the English Governor had only shortly before confirmed it to the Children of Anneke Jans — The span of years is very brief between this confirmation to the Bogardus children — and the crown grant to the Duke of York in 1664 after whom the confiscated company's farm was named —

When the Duke of York succeeded to the English throne — there was merely a change of name and this farm became known as the "King's Farm" — Then again — when Queen Anne ascended the throne it became known as the "Queen's Farm" — merely a change in the name. Now this should convey to you — and to the world — that the action of the English Governor Nicolls — in confirming this title — establishes the recognition on behalf of the English rule of the existence of this Bogardus tract —

To illustrate — so that you will keep it clear in your minds — during this early period there was no conflict or misunderstanding on behalf of the English governor or the Duke of York — as to the existence of the Bogardus Farm — separate and distinct from the Duke's Farm. Peter Stuyvesant — the Dutch Governor — described the property of Anneke Jans, widow of Everardus Bogardus deceased as

> A piece of land lying on Island Manhattans — along the North River — beginning at the Pallisades near the house by the riverside — and running North by East —to the division line of old Jans Land — two hundred and ten rods — from thence along the said division line — East by south — to the swamp — then southwest 160 rods — from the swamp to the riverside — extending west in breadth 50 rods — the land which lays south of the house—and East of the division line of the company's land — begins at the Pallisades — and runs south to the Post and rail fence of the company's land — without obstruction to the road — is in breadth 60 rods — in length on the south side

along the posts and rails 160 rods — on the east side to the gate of the Kalckhoeck — in breadth 30 rods — in length on the North side along the Kalckhoeck — to the division line of the aforesaid land ————

Therefore — the very description establishes the Company's farm — adjoining the Bogardus Farm. You do not need any further proof that the two farms were separate and distinct —

Again — you have merely to read the confirmation grant to the children of Anneke Jans by Governor Nicolls — to find the recognition of the two parcels of land — the company's farm — and the Bogardus Farm — two separate and distinct tracts of land.

That description says: "and from the swamp to the strand — going west — it's in breadth 50 rods — the land lying on the south side of the house — to ye ffence of the land belonging to ye Company — and so to the east side — begins at the ffence and goes south to the post and rails of the company's land — without any hindrance of the path."

Therefore — my friends — you will see that there is established by this documentary evidence — the existence of two separate tracts — bordering on each other — You can defy anyone then to prove — when or where there is any record of a valid documentary nature — showing the merger of these two tracts — You are, therefore — face to face with the question of when — where — and by what methods — your ancestor's farm was gobbled up and appropriated by this church.

LOVELACE TRANSCRIPT

I have referred to the non-existence of a valid documentary record — to establish the merger of these two tracts — There is a record however — it is known as the "Lovelace Transcript" — A conveyance supposedly given by the children of Anneke Jans to the then English Governor — The Right Honorable Francis Lovelace — It is my opinion that this record is spurious — and from a close study and examination — I have been led to the opinion that it was almost criminal — if there was any such thing as criminality then as now — where the rich are concerned.

I shall take occasion later to speak of this transcript in connection with the principal case — that of Bogardus vs. Trinity Church — reported in 4 Sandford.

BIRTH OF TRINITY CHURCH

When the Dutch were in control of the province —the Dutch Reformed Church enjoyed the precedency over all other churches — but when the English obtained control in 1664, as a matter of course the Episco-alian — or as it was then generally called — the English Church — obtained the ascendency. From that time the chapel in the fort near the battery, was called the King's Chapel — and here the Episcopalian services were held — The building known as Trinity Church was not erected until the year 1696, and services were first performed there February 6th, 1697.

Church Lease and Grant

In 1697 Trinity Church was given a lease of this King's Farm, by the then English Governor, Governor Fletcher — The lease ran from August 1698 for seven years — Later — and at about the time of the expiration of this lease — the church claims to have obtained a grant of this King's Farm. This grant is what is known as the Queen Anne grant — but it emanated — if it emanated at all — from the then English Governor — Lord Cornbury. Up to this time there appears to have been no conflict between the lessee of King's Farm — George Ryerse — and the possessors of the Bogardus Farm — and apparently this condition existed down to about the time of the Revolutionary War — when the male members of the Bogardus family were away — fighting for what looked at that time — a hopeless cause ——— American Independence.

History records the fact that during the Revolutionary conflict, this church was notoriously in favor of British rule, and against the establishment of American Independence. This of course is no news to you — but it does seem significant does it not — that those who fought for independence were deprived of their property — while those notoriously against it, seemingly benefitted by their very antagonism.

BOGARDUS SUIT

Shortly after the revolution and the establishment of the American Republic — about the year 1830 — one of the Bogardus descendants — Cornelius Bogardus — brought suit to recover this property. This suit continued for a period of about ten years. The record of this suit has been continuously circulated throughout the States, and exhibited magnanimously by the missionaries of this worthy religious organization — time and again — to convince you of the error of your ways — and of the futility of your endeavors to regain this property. This, my friends — is deep religious thoughtfulness — this is magnanimity of purpose — this is true, kind, sweet charity — this is done to prove to you that you are wrong and making a dire mistake in endeavoring to force a restoration of your rights from this religious organization, or an accounting of the funds realized from the possession of those rights. But — judging from the assembly here — the advice of this church for you to abandon these endeavors — has fallen on barren ground — and I am glad to see that you are undaunted still — that you have not heeded that free advice — for it proves that old adage is all too true "Opposition feeds the flames."

The evidence in one of these cases is quite complete as to the methods used by this sinister religious organization to obtain possession of this property — the part played by the sheriff in tearing down the Bogardus fences — setting fire to them — driving the women out of what was then called the "Possession house."

It is needless here to go into the heartbreaking sufferings that your ancestors must have endured to retain possession of this property, for you can read between the lines of the recital of the methods used by this band of hypocrites to drive them off — Suffice it to say that in one of the cases the Judge did have the temerity to characterize the antics of the rulers of the Manhattan Universe, as most reprehensible. Now whether that Judge got tarred and feathered — whether he was banished from the church entirely — or whether he was punished by not being mentioned in the Governmental family prayers — history does not disclose. That seems to have been the favorite method

of punishment — omission from the prayers when you committed some such dark deed — but indeed such boldness on the part of this Judge should have met with some swift rebuke. He was treading on dangerous ground, and no one knows that better than do I — I've been there.

Now it was in this celebrated Bogardus case that there cropped up a piece of evidence — the aforementioned Lovelace Transcript. The record of this document has played a most important part in this controversy — and has been — in my opinion — one of the greatest pieces of evidence used in the efforts to swerve the heirs from their averred purpose of bringing this church to time. This document purports to have been made by the children of Anneke Jans Bogardus to the then Governor — the Right Honorable Francis Lovelace. From the record it would appear to have been made in or about the year 1671. Naturally don't you see — had the children of Anneke Jans Bogardus deeded this property to Lovelace you would have no cause for grievance today. Apparently no one knew of the existence of this supposed deed up to that time — for upon the trial when the deed was presented to the court, even Trinity itself would not invoke it to protect her claim to this property — and repudiated its presentation. The record does not disclose, however, whether she expected it would be received or not.

It was used, however, and did get upon the record — seemingly unpresented by anyone — a peculiar incident to say the least. Are not proofs generally offered or presented by one or the other party to a suit? Are not litigants in title cases generally eager to discover and present bona fide records of transfers affecting titles to property in controversy — particularly when as in this instance it fitted in so nicely with the requirements of the situation — was it not the very piece of evidence wanted — and wanted badly?

What do you think Trinity then — aye even now, would offer for some honest, bona fide, documentary proof to establish that the children of your ancestor sold or conveyed their interest in this farm? What do you think Trinity Church would have given to have been able to cast aside this despicable, dishonorable cloak of adverse possession, to enable her to maintain her grip upon this farm?

You must not ask yourselves the question as to whether Trinity knew that this Lovelace transcript was a false record, a spurious record, lest dire things happen to you for such carelessness. Well, notwithstanding anything we may say or think, the fact remains that this transcript, as stated, did get upon the record — and was used in that case to establish the claim that Lovelace acquired the Bogardus farm under it in his official capacity for the Crown, and that it thereupon became a part of the King's Farm and passed to Trinity Church under the so-called Queen Anne grant some thirty years later. Thusly the court gives this transcript life — and reached the conclusion that the document was executed, and that therefore the property did pass out of the keeping of the children of your ancestor.

Is it not a fact that this case must have been tried before a very kind and accommodating Judge, for he recites this transcript at length, and lays special stress upon its importance. He even does better than that. The transcript purports to have been made to the Right Honorable Francis Lovelace, not as Governor, but as an individual, and, there being an absence of any conveyance by Lovelace to the Crown, this accommodating Judge, by some hocus pocus, or other wild flight of imagination, assumes that because Lovelace was Governor he took that property for the crown. The records show that Governor Lovelace owned other property, taken in the self same manner, taken by him individually, yet nowhere is there a record of any claim or controversy that such property belonged to the crown, so far as I have been able to discern. I ask you — don't you think this was a kind and accommodating Judge. I do not wish to be too critical, but let us suppose that the Governor of your State acquired a piece of property in his individual name. Do you think that the fact he was Governor at the time he acquired the property would justify your State in making the claim that he took that property for the State — without some proof that the consideration was advanced by the State — or some other evidence. What court would assume, under these circumstances or attempt to argue themselves into believing that the state could make or enforce any claim to this property. Isn't the proposition preposterous to say the least. Can you wonder that there was a travesty of justice in that case?

Don't you think this was a supreme effort to throw this title into the possession of the crown, and make it a part of the King's Farm — to enable the church to claim it under the so-called Queen Anne grant?

This was, in my opinion, a wonderful piece of judicial chicanery. Its effect has been potent for nearly a century — I should have said its dire effect.

Do you wonder then why the very first question that engaged by attention after reading this case was the necessity of determining the validity of this proposed transcript or transfer — this apparently perfect link — evidencing the passing out of the title of the Bogardus children — without which it would have been absolutely futile and useless to have wasted time further on the matter. Having satisfied myself that the records prove conclusively that this document was a spurious record — I took heart, and began to take the case apart, the next case, and the various cases — putting the acid test upon each item of proof — each statement of the court, and I say now that I hold the firm opinion that this piece of justice was the most colossal fraud ever written into the historical pages of any civilized country.

Naturally, I have often asked myself what has been the effect of this false finding of fact by this Judge upon this controversy — this erroneous holding that this transcript was a legal document — and conveyed the Bogardus childrens interest in this property to Governor Lovelace — and the assumption that because Lovelace was the English Governor it reverted to the Crown, and thereby became a part of the King's Farm. Was it a contributing cause for a large number of the heirs in years gone by to abandon their efforts? Some of course there must have been who put small stock in it — or the details of this claim would never have been handed down to your parents, and by them handed down to you.

You can rest assured of one thing — that this deeply religious, sweetly charitable, philanthropic real estate corporation, has not failed to use the facts set out so clearly and admirably for them by the Judge who asserted the legality of this transcript — One Judge mind you — and the wonder to me is that this effort has survived and surmounted all these difficulties. It is comforting to know that you are not easily affrighted — that you are as hard-headed as your ancestors. You can bet that you are giving

them some trouble with your little bands here and there cropping up throughout the States, and that they are hard put to it to devise ways and means of getting rid of you and disrupting you. Oh that you might give them more trouble, and still some more — that this Order of yours — this army of Advocates may soon reach even tens of thousands — that this army might prove to this church the handwriting on the wall "Thou has been tried in the balance and found wanting." I do not expect that in the struggle that is to come they will be so proud of this transcript — nor do we need to expect that they will send their missionaries and messengers throughout the country to exhibit this case — to preach unto you good people the gospel of "Let the church alone." I think we can confidently say, and feel sure, that they will exhibit no more books of justice — to cool off the ardor of the exponents and advocates of this Order ——— for I think now, for the first time, we have the evidence and the proof to establish what we shall term ——— the spuriousness of this transcript. We anticipate that they will be ashamed to assert it, or to ever claim that the children of Anneke Jans Bogardus, ever saw the transcript — much less signed it — or authorized the signing of it.

Therefore, you must realize — that this is perhaps the most important feature of that case — a feature that would — to an ordinary layman — yes even to a professional man — cause him to pause, and almost for a minute judge you in the wrong — if the real facts were not pointed out to him.

Certain it is that we would not be here today, that we would not assert such a claim as we are asserting, if there was any actual proof that any of the children of Anneke Jans Bogardus transferred their right and interest to this property to anyone — whomsoever.

I think therefore — we may safely rest assured that this one and only piece of documentary evidence — or proof — so kindly written into, and set up in that case for the benefit of the church — has — at last — after 200 years of untiring perseverance, patience and fortitude, and the expenditure of an endless amount of money — for legal talent — by those interested — can be shown and established as invalid.

The immeasurable wrong and injustice effected by this decision, and its influence — is almost inconceivable. Whether intended or expected — one can only conjecture — for it certainly has the effect of building a chinese wall around the possession of this property by the church — to protect it from the attacks of the rightful record owners.

I have wondered oftentimes how certain evidence admitted in that case, could ever have been admitted on that record — if strenuously opposed as it should have been — in a conscientiously fought litigation. I have entertained the thought at times that that particular case was intended almost as a friendly lawsuit — intended to be used to frighten off those who may resolve to assert any rights to this property — and since my enforced connection with this controversy — as I shall explain later, I have oftentime wondered how anyone bearing the name of Bogardus could be on friendly terms with this church, or how anyone of that name a descendant of this illustrious lady could be associated with the law offices of the attorneys who have represented that institution for years.

Likewise we may all wonder why this case, decided by one judge, involving this valuable property, was never appealed. Why the complainant was so self-satisfied, as to allow the matter to rest there.

Time will not permit me to dwell long upon this chapter — but I will say that there are other surface indications that would lead one to suppose — that the illegality of this document was known. We will leave these — however — for future discussion.

ADVERSE POSSESSION

Having destroyed the validity of this one piece of paper evidence or proof — offered in this case — I now come to another leading question upon which this religious corporation rested, in that case, its claim of title to this land granted to Anneke Jans Bogardus, and later confirmed unto her children — thirty years before the founding of this church organization — that is one other method of taking property belonging to another. I refer to the question of adverse possession. This is one other point and stand which this church has been compelled to take throughout this controversy — Rather a disreputable stand — to say the least — for a religious institution — for courts have defined adverse possession claims as doing a wrong — and taking advantage of that wrong ——— In other words — self-confessed wrongdoers. This is a nice little way of taking something you well know does not belong to you — when you know you have the necessary force, influence, power, and literal brassbound nerve to carry it through — and to drive out the rightful owner. The fine point to this particular adverse possession — however — is that in this case the wrong was committed by a supposed church of the living God.

Reading back in the pages of the history of this country — it is not hard for us to realize the power wielded by this church organization — which at that time was almost the representation of the English Government in this country. How easy then for it to take that which it desired, and to brook no interference for that taking, whether right or wrong; but for that condition to have maintained after the formation of our great Republic, is something hard to understand, as hard to understand as the fact that, in my opinion, a fair hearing has not yet been given to the descendants of Anneke Jans Bogardus.

What power, what colossal influence, was given to this church organization, by the acquisition of its great wealth, the major part of which was founded on that property which belonged to her neighbor; influence and power by which she has been enabled thus far to withstand any attack made against the withholding of this property, from those, to whom we claim it rightfully belongs.

This brings us down to a realization of the fact that Justice must indeed be asleep, when the issues are between the powerful and the humble, except where that potential influence is invoked "Public Opinion," the forces of which have, in my opinion, been sadly neglected by you good people.

Therefore, as I have said, I feel gratified to think that I have been chosen to be your leader in the enlightenment of the American people on this most iniquitous crime committed by a religious organization — for crime is strictly a violation of law either human or divine.

You no doubt can understand that this is a subject very near and dear to me. It has, in fact, become almost my very life blood, in that it has taken from me almost the

supreme sacrifice, for it took that which every professional man hold dearer than life itself, his badge of honor, his sheepskin. And since my own persecution, I can well understand how it was possible for this controversy to arise between the descendants of Anneke Jans Bogardus and this Temple of Religion. I say that Temple of Religion advisedly, for with the history of this religious corporation before me, I cannot bring myself to call it a Church of the living God, believing, as I do, that which I was taught at my mother's knee, that our churches are the footstool of the Almighty. I believe therefore that this church has forfeited the right to be called that sacred name a church of God, through the perpetration of this wrong, and the sins committed since its perpetration to justify that wrong. Can we call this a church of God this religious organization which has persecuted good men and women for their belief and work for this cause? Could you, yourself, by any process of reasoning, feel that you could enter the portals of this church and feel that you were in the presence of the Almighty God. It is aptly placed, this sinister financial and religious edifice, at the head of the Street named after the ——— author and finisher of our fate ——— Wall Street. It is hard to think that a religious corporation would commit the wrongs it has, simply to acquire wealth and power, and to justify that dishonorable acquisition — sticking to it with a tenacity of purpose worthy a far better cause for a religious institution than depriving the children of their neighbor of their birthright — that neighbor who had worked hard to gain a foothold in this new world.

Does it not seem strange to you, my friends as you look back on the many failures suffered by this cause as you realize how many little bands have started up here and there only to fail because of lack of endeavor lack of the necessary stamina lack of that very vital interest in this case which we, as a monument to those gone before should never desert until our work is finished — does it not seem strange to you I ask to find us here assembled, after all these years of endeavor just as keenly interested, and I hope just as determined as were your forefathers to do all in your power to bring this weary struggle to an end. And as I look upon you good people here I do indeed hope and pray that you may never lose faith in the principle that right and justice must at last prevail that even though our paths have been fraught with sacrifices and heartaches we shall press onward with the same unflinching determination not to yield to this great power as did our ancestors when they went into that memorable conflict of 1776 which resulted in this glorious land of freedom — This great American Republic which, if we do our duty as citizens and workers for the cause of right will yet become an abiding place for justice and equality — for the rich and poor alike.

These battles for American Independence are not unlike your efforts and those of your ancestors to secure justice guaranteed by those illustrious founders of this great Republic they laid the corner stone and voiced the principles which made these United States "the land of the free and the home of the brave." They intended by their sacrifices to insure to the future generations a land of freedom and justice in its fullest sense of the word—The question then is shall you and I allow to be trodden down and silenced those principles established and proclaimed to the world as a watchword of these United States? I say No! And I am sure you are with me to a man, heart and soul — otherwise we would not be gathered here today — It is your belief in the righteousness of this cause it is your belief that right must at last prevail it is your belief that the crimes committed under the powerful financial cloak of this religious corporation, must be punished and restoration made which brings you together today and I am sure you are with me in the resolution that you will stick and carry on this work to a finish — this time. So today it becomes our national duty to fight the same old enemy our forefathers fought if we would uphold the principles of justice and equality if we would rid ourselves of one kind of Justice for the rich and powerful and another for the poor and humble. If we would exterminate this, recently characterized by a New York newspaper, as "Hog-tied justice." The pages of our history are replete with the records of injustice and discrimination in favor of the rich and powerful as against the poor and humble and as we come together I want to impress upon you good people the importance of this work undertaken by our Order with full meaning in its name

— Advocates of Justice —

You not alone want to sign that constitution and by-laws pledging yourselves to live up to its precepts — but you want to become real Advocates of Justice for all mankind. Oh I know it is taking on a large contract but when you realize that there are many others around you suffering from this mishandled justice and that an Order like ours can with proper organization bring to itself unlimited power could give a helping hand to others I am sure we could sign no better golden rule we could erect no greater monument to those of our ancestors who supported this cause than to perpetuate this Order — carry it on even after our work is finished and become National Advocates of Justice for all mankind. Let us pledge ourselves to make this every man's fight to exterminate these elements which seek to make paramount powerful financial influence and favoritism — at the expense of the fundamental principles of our government.

As we read the paper from day to day one almost at times loses heart — for, seemingly, man has lost honor and selfrespect. Crimes are committed by the rich and powerful — and the scales of justice still remain unevenly balanced by the weight of the powerful influence of money — and it seems we are wandering very far from the goal of common justice and a square deal for all mankind.

You must see then what a power for good we could make ourselves — if we properly build up this organization — and gather into our ranks the same material — the same blood — which made possible the freedom of our land by that war of Independence.

Buffalo Times Article Page 1

I cannot pass this question of adverse possession, without reading to you from an article printed in the Buffalo times on the first or second of this month. This article appears to have been written by a person of the name of Schuyler. Presumably a descendant of the Peter Schuylers, who obtained valuable grants in Manhattan under the English rule. But why this sudden awakened interest in this matter by Mr. Schuyler? Why this great pity, and fear that someone will swindle someone.

This man wants you to believe that he has written this article out of the fullness of his heart, and his desire to befriend you. He calls it taking advantage of ignorant

people. Well I myself have been in this work for some time, and those whom I have come in contact with are far from being ignorant. Ignorant of methods such as he is employing to stop this work you might be, but it stops right there. His keen desire seems to be to stop the many efforts being made to resurrect this controversy, and he wants you people to realize that it is useless for you to believe that man made laws can be repealed or changed by man.

Now, my friends, this, in my opinion, is another one of those so-called cats-paw efforts to disrupt this organization, and stop your work. You will always find these friends of your pocketbook arise, when the fact becomes known that you are on the warpath again, to warn you to beware, that you are the victims of swindlers and the like, but you never find that they characterize your adversary, except in the kindest of terms. To me it always seems like that old saying fits best situations like these "Birds of a feather flock together." The same old influence — money — the same old potential force must be used against you — you must be made to look ridiculous in the daily press they must have their jibe at you you must be made to appear as a band of ignorant people who have rushed pell mel into this battle without a thought of right or wrong what superb pity he has for you.

The point I want to bring home to you good people is that this is but the forerunner of other articles to follow and as you grow stronger and stronger, you will find the press accounts will get bolder and bolder. You will be portrayed as the poor innocent victims of swindlers and shyster lawyers. But, my friends, is it not a fact that it is only when you make a good, hard, honest effort to get somewhere with this work, that these newspapers get busy.

Do you believe that this man Schuyler, living in that great metropolis, the biggest centre of our Republic, does not know the antics of the Legislature of the State of New York that he has never heard of it putting over any special laws to accomplish special purposes that he has never heard of the big interests getting special legislation passed, to make the rules of evidence fit heavy litigation and to deny the right to use the usual lines of evidence which could possibly make litigation successful against them, especially in estate matters? According to this man, you are too ignorant to know and understand that you, as citizens of the U. S. have the divine right of making your own laws.

But, my dear friends, the greatest and most important feature of that little article, is the meat of the cocoanut. It is the most important point, and is the point which will condemn this religious organization, whose sin he is seeking to justify and with the help of God, and you good people standing staunchly back of this I tell you that I confidently predict that three years will bring the decade of this illustrious edifice, and religious corporation that in that space of time your organization will have won to your side every Godfearing Christian in this great universe. **I believe when your story is published and broadcasted throughout this land that shortly the time will** come when Godfearing men, the true Christians will not enter this temple of religion, until restoration shall have been made, and right shall prevail — for, mind you, not alone your property, but in my opinion, State property was taken also when this corporation produced the document which she claims is the grant of the King's Farm.

The article points out that the church has had open and notorious possession of this land for years and he cites you to the statute of limitation on which adverse possession is based. Now right here is the meat of the cocoanut. Does he point out to you a scrap of paper an instrument a deed a grant or anything of a valid nature showing their right to the possession of this property. No, but you as an ignorant people must hearken to his words of wisdom you must abide by that adverse possession claim. What right have you to demand that they produce a valid paper title to this property that they shall make restoration of your rights; or recompense you. Remember he depicts you as the victims of swindlers. He points out the hardship that would be suffered by those who have purchased this property. I can enlighten this worthy teacher then to this extent that certain it is if the purchaser of any of this property was an inhabitant of the City of New York he bought that property knowing of this controversy over it and of this question on the title, and he bought it also with an abiding faith in the power of the real estate shark who obtained it, as he says by adverse possession to withstand any attack against its title.

Now, my friends, Mr. Schuyler knew when he wrote that article that Trinity cannot show any prior paper title or grant to this property he knew that your title, your paper title or grant from the English Governor, anti-dated Trinity's grant by some thirty years. Tell me then how any Godfearing man one who takes God's laws for his guidance could write an article justifying the persecution and deprivation of another a taking of that other's possessions which they had worked hard to obtain, hold and enjoy.

This highly educated gentleman — who is so free with his advice to you — does not tell you that there was a Bogardus Farm long before there was ever a Duke's Farm, Queen's Farm, or King's Farm.

He does not tell you that when this so-called Queen Anne grant and the prior lease were made — there was a record of the English Governor having confirmed this grant of the Bogardus to the heirs of Anneke Jans. Now will he, or any other sensible person presume that the English Governor — if he did give Trinity that so-called Queen Anne grant — did not know that the Bogardus tract was a separate and distinct tract — and that if it was so intended to be included in this Queen Anne grant, and made a part of this King's Farm — the description would have so stated.

This then is the best proof in the world that when the King's farm was created it never included the Bogardus Farm — and justifies our firm belief in the evidence in the cases of the forceful entry and taking of this property — the driving out of the Bogardus children during the revolutionary period — the burning of the fences — and the employment of dire and sinister methods by this — even at that time — most powerful organization in the province — to lay hold of this coveted land.

What To Do

Now, my good people, you ask me what you should do and I say to you with all sincerity, do what the confederate bondholders did after the Supreme Court of the United States said they had no legal claim. Organize.

If you believe that a just cause never dies — that in these United States where the people rule the voice of the people will find a way, an avenue, to mete out Justice — Organize.

If you would do what the mothers and daughters of our

land have done to enfranchise the women — Organize for though the Supreme Court of the United States wrote into the Constitution the prohibition of this enfranchisement — did that daunt you women? You engaged that most potential force organization — National Organization by States with victory the result.

Here was the best illustration of how little can be accomplished by one little band working alone. Before woman gained this victory, the National League of Women voters had to be formed and each state join hands to help the other.

What did the wage earners have to do for their own protection, when they failed to get Justice in our Courts. Organize—and we have today in nearly every State in the Union, the Wage Earners Compensation law, to give the wage earner that degree of protection and justice which up to that time had been denied them.

Again, witness today the force of organization on the part of the members of the American Legion.

Then the Farm Bloc.

Go where you will, in every line of business industry — it is organization which brings to it success.

Do you not find in every large city a Chamber of Commerce?

So here, my friends, you will find that to attain that foothold you have been seeking in vain for years you must first organize — that is the goal for which each one of you should work — do not be content to joint this association and pay your dues — but gather others into your ranks — for there are plenty of good, solid, honest citizens in this good old world of ours ready and willing to help an honest cause. Don't be afraid to tell your troubles, your hopes and your fears, and you will soon find that instead of we folks being the subject of ridicule whenever we come out of our shell — people will soon begin to say "what's the matter with justice all these years" — give them at least a chance.

In this last point I have given you a short lesson on propaganda. The preliminary work for public opinion — without which no great movement in this world can be successful.

We Americans are a powerful people, so acknowledged all over the world — and never was this made more positive than the period of our entry into the great war. Though it has been repeatedly stated that we went in unprepared — and verily we were in the way of arms, shot and shell — but our minds were prepared — for did not the daily press thus prepare us — did we not have speakers spring up in every corner of our country, urging us to enlist, not to wait for the draft — to do our duty like men. That was propaganda — preparing you, yourself, not with arms and ammunition — but inflaming your mind — stirring up your mind to the necessity of our entry into the World War, the results of which it is not necessary for me to tell, it is too well known.

Again, another illustration of the power of propaganda and public opinion — You will remember we claimed the right to take the Canal Zone from our neighbor Colombia. What happened? In a short space of time the daily press started with its propaganda and soon the public conscience was awake and realized the wrong done our neighbor. Today that public conscience public opinion has forced the righting of that wrong — has forced the purging of the indictment which civilization brought against us. We paid — the debt has been settled.

Good people, I have tried thusly to show you that nothing absolutely nothing, can be done single handed today. Therefore first and foremost in this work — organize bring in your friends and neighbors to help you fight this just cause. And in your work let me impress upon you this most important thing — let this fight for justice go on unhampered by petty bickerings, discontent, dissatisfaction, and want of faith in your leaders. Do not always be looking for the mote in the other fellow's eye before you have taken the beam out of your own eye. Remember that if you do not support the work regularly you tie the hands of the workers. The cog wheels will not turn without grease.

I cannot speak too highly of these little gatherings — they bring you closer together not in the nature of business, but to come together happily to enjoy yourselves and to cement yourselves together by friendship. For that is one of the lessons I want to bring home to you, my friends if you cement yourselves together by the wholesome bond of brotherly love—those malcontents, whose mission in life has been for years to sow the seeds of dissatisfaction, discord and strife among us to disrupt our order, will find that their seed has fallen on stony ground, where if they take root and spring up, will be quickly withered away and blasted by the strong winds of love, honor and friendship.

I am speaking thus plainly because I know from experience that it is these seeds of discontent and dissatisfaction sewn amongst you which disrupt your ranks.

During a period of about four years, when I had this matter in my hands before we had only a small band of 50 or 60 in Seattle, and about 15 in Tacoma. A few others were scattered here and there — with a promise of 2,000 more which did not materialize. I could then accomplish very little except to work out lines on which the work should be handled and also work upon the legal questions involved; take notes for future use, etc. When your committee from Wilkes-Barre called upon me with a request that I come back to the work and informed me of this association of some 2,000 members I at first declined for, with my former experience rather fresh in my mind and what it has cost me I had little faith in the stamina of the heirs to back the sort of a work you have on your hands, in the manner in which it must be supported.

Our country is the growth of over 200 years, is it not? You know that conditions today are vastly different to what they were 200 years ago. Remember it took sacrifices, shedding of blood, deprivations, and heart rending sorrow to bring this wonderful country of ours to where it is today. Now my good people in this work you are going back over that road step by step back to where they started in those good old pioneer days. There will be the same hard work, and sacrifices to be made not in the shedding of blood it is true, but in time and finances. Each stone of that 200 year old building has to be removed carefully, we must examine the cement between those stones lest there be some proof there overlooked by some previous searcher for these records we must place each link found — piling it up piece by piece until we have reached the bottom of the foundation and exhausted every nook and corner in our search. Then we have to come back step by step fitting each record and proof found into its proper place, until the whole is built up again and perfected.

Now in case some of us do not understand just what I am driving at — let me explain —

We have found it necessary to evolve a vastly different plan to that followed in past endeavors. We have been brought, by those past failures, to a realization of the abso-

lute necessity for favorable public opinion to combat the public ridicule with which your efforts have suffered in the past. The question then arose in my mind as to the best method of creating favorable public opinion and how to broadcast this story. By the press? I doubt if we could find a newspaper which would not be influenced by this great financial religious power, and which would publish our story as we would have it published. Then the plan was evolved to publish this story in book form including every piece of evidence every scintilla of proof that we can find take each and analyze it for you in order that the public may see the brand of justice meted out to your ancestors photostatic copies of all the instruments will be contained in this book and, because the exact location of this property whether intentionally or unintentionally I leave to your own conjecture has become so vague in the records we shall, by a process of elimination make our own map to the property. Then it will contain a true, and authentic story of how this property passed out of the possession of the children of Anneke Jans Bogardus and into the possession of Trinity Church.

When your organization has reached the proportion to enable the publication of this work the different associations and societies of the several States will be asked to select from among your legal fraternity one of the ablest men in your state a man whose reputation and standing will inspire you with confidence a man whose judgment you will be willing to back, without question. This chosen representative you will send to a convention to be called for the purpose of deciding on what your future action will be.

The most I can hope to do is to convince this convention of legal minds of the soundness of my opinion in regard to this matter and you must be willing to await the outcome of that conference as to future plans in your behalf.

You realize, do you not, that this book will be of the utmost interest, not alone to you, but to the reading public and that by this means we shall be able to raise a fund to carry on our work — more in keeping with the financial power of our adversary — for without some such plan the heirs could never hope to create sufficient financial power to carry on this demand for their rights.

This book then will create two essential things — financial power, and public opinion and with these two you will soon change the tone of the press, from ridicule to profound respect. The general character of the propositions involve the facts to support my opinion that there was committed one of the most gigantic, colossal and monumental frauds ever perpetrated in a civilized country. Perhaps it could be excused by the fact that then, as now political and financial influence and power made it possible and it was not considered unholy to use that power for selfish benefits. I say it was colossal fraud, because we may pass, and in time forget, the perpetration of fraud as by one individual against another but when that wrong and injustice for selfish greed and personal benefit is perpetrated by the representatives of a religious creed a church, an institution which demands our reverence the institution whose mission in life is to guide the little feet of our children in the straight and narrow path, and which is, to we fathers and mothers, our inspiration and guide away from the mundane and wicked things of life, into a bright and glorious promise of the world to come — that institution which from the time we have been able to lisp "now I lay me down to sleep I pray the Lord my soul to keep" we have been taught to reverence and consider our meeting place with the Almighty God — then I say for such an institution to commit this crime is colossal. And I say here and now — that it is our early teaching, our feeling that one of our Father's houses has been desecrated by this colossal crime — our indignation against those powers which have made this possible — which keeps this fire burning from generation to generation —

Remember that I have already felt the print of the iron heel I have already measured the sinister power of this political force — and they have not crushed me — for I am back here now ready to fight with you — Are you game then to stick with me — to go against this remarkably powerful institution — or are you willing that it shall crush you and silence you again. I cannot — I do not — and I will not believe it — for I have an abiding faith in our grand old dogged American spirit of resolute will that does not know defeat. That stalwart spirit which we inherited from the pioneers of this splendid country of ours — which never lays down a principle for a threat.

Question: Can you find one word, in these speeches, that spells in the king's English, a promise of the evidence or documents, upon which these people "Could or would" recover any property?

Flint, Sept., 1923—7th.

Garland Street Church.

Friends and Bogardus descendants. I take it that this audience is made up of the Bogardus family and their friends. From the gathering here it does not look as if the interest in this Bogardus controversy is dead. Whatever makes you people stick to this cause—that's something I cannot possibly understand, because usually after some defeats people are willing to cry quits, but it seems the Bogardus never want to drop this controversy, for bear in mind it has been going on for over 250 years.

When I ceased my connection with the Bogardus matter, in 1918, I never heard of it again, until sometime the latter part of 1922, when a committee of the National Organization at Wilkes Barre came to my factory to see me. I thought I was buried deep enough so that no one could find me, but it seems through a dear old friend of mine, Griswold of Seattle, who, I understand, is one of your National Officers, your organization representatives hunted me up. Naturally I could not possibly see where I could be of any use to you people, and I couldn't see what they wanted me to do, and with my knowledge of this matter I couldn't see any way where I could help you, and I did not want to lose my business. For I have a good business there, it enjoys the patronage of some of the largest railroads, steel plants and the like, and I felt that if I became connected with this matter that my business would not last long. This committee came to see me some three or four times. There was one thing that made me hesitate and that was that Gardner Spencer and a man by the name of Brewer were with those people at one time when they called on me. I don't know whether it was the first or the second time. I knew those fellows that been getting money from you people promising you all kinds of things that were impossible of fulfilment, and I didn't want to be connected with anything they were connected with. I made this point to Bob Jones your secretary, but he has assured me that they have nothing to do with your organization at all.

I mentioned to this committee that I did not feel kindly towards the Bogardus because of the way they left me at the post, as it were, at the time I was disbarred. The question then came up as to whether I could be reinstated,

and I told them at that time how much it would cost to even print the case on appeal. I studied the matter over for two or three days as to how I could help, and then the thought occurred to me that I could put in book form the results of my investigation of this matter, it was at this point that the book plan was evolved, intended to serve two purposes, first to give to the descendants what has been called their side of this controversy, a side which has never been made public, and second to create a fund by the sale of this work which would enable you people to employ the best legal talent in the land to go over your proposition, and give you their opinion on your position. I could give you no legal opinion because I was disbarred, but there was nothing to prevent you getting a legal opinion elsewhere with the true facts before them, but to follow out any such plan funds were needed. I understand the reason I was asked to come to Michigan was for the purpose of telling you people of the necessity for funds to complete this publication, so that the first step of your plans can be carried out. You understand that I am not receiving anything for my part of the work. You people are merely paying the expenses of collecting the data and the proofs of which I have knowledge so that they can be placed in book form. Therefore am I interested in the publication, because it is out of the proceeds of that publication I am to receive my reward. What you people want to do is to get your story out to the christian world let them see just what methods have been used against you all these years, advertise in other words, capitalize your troubles, and see whether public opinion cannot do something the courts have not been able to do for you, force restitution of this property which I say was wrongfully taken from the Bogardus children. You can see the necessity for the raising of funds to meet the present requirements, for I have not been able to complete my collection to go ahead with the book. It is useless for you people to simply keep paying my overhead, and nothing further to go on with the plans for the publication. You may as well stop right here and now. The reason for me making clear my position I do not want anyone to misunderstand the work I am doing, for you understand, do you not, that as a disbarred lawyer I cannot have anything to do with the preparation of any matter for the courts, nor do I think it will avail you anything at this juncture to appeal to anything except the great court of public opinion. That is the first essential.

I am saying this because in a certain interview I have lately had with someone the idea was conveyed to me that what you people wanted was a suit, an immediate suit, and if that is your plan then it is something with which I cannot be connected and for my own protection I am going to make that clear. My part of the work is to give you the results of my investigation of this matter. To give you what I term is the part which has always been glossed over. I hope that by giving you an interesting, gripping story of your wrongs and the passing out of this title which originally stood in your ancestors, to create for you a fund of sufficient size to enable you to follow any plans you may desire, and if you don't desire to go further that there will be sufficient raised by this publication to return you what you have invested in your organization.

No doubt you would like to know some of the facts of your proposition, and truly from some of the stories I hear you are badly in need of being set right on some of them. Your ancestor Anneke Jans came over from Holland with a husband and two children. She was given a grant of some 62 acres of land on Manhattan Island. At that time that farm wasn't worth a great deal, although it wasn't long before coveting eyes were cast on it. Jansen her first husband died, and she married the Dutch minister Bogardus, who was drowned going back to Holland to lodge some complaints against the governor of Manhattan. Anneke Bogardus was left with eight children, and when she died in 1663 she left behind seven children and two grandchildren one of her daughters having died. The first Dutch grant does not seem to be in existence, but she received a confirmation from old Peter Stuyvesant in 1654 which mentioned the first grant and later after her death her children received a confirmatory grant from Gov. Nicolls, in the year 1667.

Now it is my understanding that there had been much talk about this that and the other being found. Anneke's bible, Anneke's Will, Anneke's lease, and such. I want to say do not be fooled by such statements. If you want a copy of these grants or of Anneke's will, write to the secretary of state at Albany, and they will furnish you copies, and certify them. They will not cost you $5. But do not run away with the idea that any such papers will help you to get this property. For instance if you found your mother's bible it wouldn't help you get title to this building would it? That is just as remote as these things are from the situation with which you are confronted today.

Now let us get back to those grants. You can see therefore that there was a Bogardus Farm before there was a Trinity Church, and the thing to be considered is how that Bogardus Farm was swallowed up in the church farm. Now don't get the idea that Trinity Church is built on the Bogardus Farm or that Wall Street is on the Farm or the Singer tower or the Woolworth building—that is all bunk which has been fed to you people for years through the newspaper stories and magazines. You people are always laying claim to everything on Manhattan Island below and above and even the moon. History and old maps record that the Bogardus farm started somewhere about Warren and Chambers street in New York and went up to Canal Street. Kings farm according to old maps and histories was one of the company's farms, and bounded the Bogardus Farm on the southern part, for the description in the Bogardus grants says "To the post and rails of the company's farm." When the English conquered Manhattan, this company's farm, with all ungranted land, came into the possession of the Duke of York. The company's farm then became known by the name of the Duke's Farm, later when he became king it was the King's Farm, and later was known as the Queen's Farm. At any rate it was the farm usually given to the governors of the island for their own perquisite. In the so called Queen Anne grant the description on the northern and southern lines is so vague that it opened the door for the gulping in of the Bogardus Farm under that paper title, but the question is—is there any paper extant which shows that the children of Anne Jans ever signed away their rights in this property? If there is I have not yet been able to discover it. True we hear of what is called the Lovelace transcript, which is supposed to have been signed by all the children with the exception of Cornelius. You can see the necessity for this transcript can't you, because if the children of Anneke did sign away their rights in this property to Lovelace, and through Lovelace it came into the possession of the crown, that opened the door for the granting of this property by the crown.

Now this promised publication will take in all these interesting facts, as well as the cases which have been decided in the courts against the Bogardus, and where I chal-

lenge the honesty of any statement made, it is up to me of course to present certified documentary proof to back up my statements. This is expensive work, because historical collections are always expensive, and Colonial items and more so than others I find. My object in pointing these facts out to you is to have you understand that a great deal more money than the agreed overhead will have to be raised if these plans are to go forward, and if this is impossible, I think it is but fair that I should be told of it at once in order that I may give my while time to my manufacturing business. I know how many of you feel, but the fact is that you have been fooled for years by these promises of a suit to be brought, and no matter what your own plans were you have sat back awaiting the outcome of that suit. Some of these suits have been brought in my opinion, simply to stifle the grumblings, to make good on promises which should never have been made, and for that reason I am particular that no such promise shall attach to this work. First and foremost you must gain public opinion. You can do that by telling your story, and when those facts are read by the God-fearing world you will have influence to back up any plans which may be made by those to whom you take the facts for an opinion. Don't do as has been done in the past get some small lawyer who can be overwhelmed with the influence and power of this religious institution, but get the best talent of the land, beyond the power of this influence, men whose names mean something to the community in which they live, men whose opinions you will be willing to abide by, and you cannot go wrong. Understand all I can do for you is to publish the true facts.

I understand that the major portion of this organization is here in Michigan. You must have friends and relatives outside this state. If you want to make this movement successful you must organization, for no small group of people will be able to finance these plans. Then again you have your National offices to maintain, all taking money. If I had the finances I would not ask any help, for I would go ahead with this work myself so sure am I that I will be rewarded for my efforts in the sale of this book, but unfortunately my disbarment left me a poor man, and the only thing I can contribute is the brain work and the writing of the book.

When I first came into this work I suppose you people know I had defended a man named John H. Fonda for fraudulent use of the mails. The indictment was dismissed, and then I received several letters asking me to go on with the work. One of the representatives from Cleveland came to see me a Mrs. Buys, and it was to her I said that I could do nothing but investigate as I did not know the facts, that I had simply the defensive with Fonda. She promised that she had sufficient people to back up such an investigation. After I got into the work these people did not materialize but I was in then and would not turn back. Later as you all know I was disbarred for my connection with this matter, but I want to say there wasn't a man who came forward then against me who said I had promised a suit to you people. Every receipt produced said investigation and not for suit, and I must have therefore been disbarred for investigating Trinity's title to this property, because there was nothing to investigate. Nothing? The very claim upon which every decision in the law books rests, adverse possession, demands investigation.

Well my friends, the decision rests with you people as to whether I go ahead with the National or not. I am anxious to proceed with my part of the work, and without your support to the National that is impossible. That is the reason I believe for my visit here that you may see me, and know that there is such a man, that you may hear the plans, and to help you to understand them.

Thank you for your kind attention. Thank you for the splendid reception you have given me, thank you for your faith and confidence which I hope always to warrant.

Now if there are any questions you would like to ask me I shall be pleased to answer them if I can.

Question: Can you find one word, in these speeches, that spells in the king's English, a promise of the evidence or documents, upon which these people "Could or would" recover any property?

Jackson, Sept. 8, 1923.

Mr. Teft introduced Mr. Gridley—said that he was glad to see so many present. You owe a good deal to your National Officers in being able to bring Mr. Gridley up here to talk to you, because you will be better satisfied after seeing and hearing Mr. Gridley. I was not satisfied until I had met him, and I do not believe you people were, and I was glad to get a letter from Mr. Roat to expect Mr. Gridley here when he would speak to you people.

Mr. Roat when here gave you a good talk, which you all understood I am sure, and could not help but realize that Mr. Roat is sincere. Mr. Jones gave you the proof of his interest and while Mr. Jones is not educated, I think that anyone that heard Mr. Jones talk knows that there isn't a more sincere man in the country than he is or one that is more honest. I know how a great number of you feel because I never had so many letters come in commenting on Mr. Jones.

I will now introduce Mr. W. T. Gridley from New York who will talk to you on this Bogardus matter. We all know he is a man well posted, a man who had given a great deal of study to the subject—(here Mr. Teft told a story about driving Mr. Gridley out and seeing some silos on a farm which I did not take).

Mr. Gridley: Friends and members of the organization and I suppose you are all friends and members of the Bogardus. I have come here to tell you some of the details, some of the facts, and some of the plans and purposes which have been made and accepted by your National officers. I do not feel like talking much today, as my mind is occupied in another direction, but I will try and do justice to the matter and trust you will bear with me. You understand that this matter has been before the public for at least 250 years, and naturally brings to your mind the question as to how the interest still lives and why there have been so many efforts to regain this property which have resulted in failure. Organized effort there never has been, and I have a great and abiding faith in organized effort. There never has been any plan started which has been pursued to a finish, simply because lack of knowledge of the true facts have made it possible to deceive you people into thinking that it was simply a case of going down there with a certain lot of papers, laying them on the table and that would be the finish. It is for that reason that I am going to give you, in a brief manner, some of the details so that you may realize that nothing can be accomplished until you have interested your friends, and your friends' friends in this matter, and asked them to come to your assistance. In other words you must use the same methods which have been used against you for the past 100 years. Propaganda. You have to get the truth before the public in such form that there will be no

question as to the authenticity of it. The same legislature which makes laws can repeal those self same laws, and where today you are much in the nature of the Confederate Bondholders whose claims were denied by the courts, you have the same privilege as they, when they banded together, organized, and through public opinion won their point.

Anneke Jans your ancestor was one of the earliest of the Dutch pioneers, who braved the dangers of the ocean, which in those primitive days took lots of courage, to come to America and make a new home in this new land of ours. She and her husband Roeloff Jansen came to America with two children, and were given a grant of some 62 acres of land on Manhattan Island by the Dutch Governor Van-Twiller. After the death of Roeloff, she married the first Dutch minister Everhardus Bogardus. By Roeloff she had four children, and by Bogardus four. Governor Stuyvesant gave to Anneke Jans Bogardus in 1654 a confirmation of the VanTwiller grant. In 1663 Anneke Jans died, leaving her surviving seven children and two grand children, all of whom she mentions in her will—and, by the way—there is no mystery about Anneke Jans Will it is on file in Albany, and anyone wanting a copy can get the same I believe for $1.75. After Anneke's death, and in 1667 Governor Nicolls, the first English Governor confirmed the grant of the lands on Manhattan Island to Anneke's children. So that up to this time there can be no question as to the fact that the children of Anneke were confirmed in their right to this property, and at this time there was no such thing as Trinity Church.

Then we come to the next chapter—years pass, and there is no mention in history of the sale of this property by the children of Anneke until after 1800, when a transport to Governor Francis Lovelace springs up, and the claim is first made that Lovelace took the property in the name of the crown of England. It is stated that this transport was executed by all the children and heirs of Anneke Jans except Cornelius. Naturally you must all see that if the children of Anneke Jans deeded their interest in this property to Lovelace, there is no earthly reason for you people questioning Trinity's ownership to that property. You know some years back there was a man by the name of Fonda who was indicted for fraudulent use of the mails. I defended that man, and in gathering the material for that defense that was the first thing I met, and I quickly understood that would be an important issue to his defense and something I would be compelled to settle in my own mind in order to determine whether or no the descendants of A. J. B. could have any interest remaining in this property, and I want to say here that in my opinion that Lovelace transcript is a spurious record, and that it was put upon the record for a fraudulent purpose, and for the purpose of defeating the rights of the children of Anneke Jans Bogardus out of their rightful inheritance. I might add that I believe I can point out four reasons showing the Lovelace deed invalid, but to give those points at this time would deduct from the value of the publication which it is the intention of this organization to put out, but I will say that it would be a peculiar paper for a man to draw who was familiar with the family of Anneke Jans and the terms of her will. Remember the date of this record in 1671 and it is safe to assume that if drawn at that time every member of the Bogardus family was well known, and as Johannes Van Brugh is the first name mentioned he certainly knew every member of the family, and every connection of every member of the family. He married the second daughter of Anneke Jans Bogardus. Do you believe that any members of the Bogardus family could have participated in that transcript under such conditions.

Can't you see that some such thing was necessary in order that this property shall pass into possession of the crown of England in order to have it appear that this religious organization who later acquired it might be able to make the claim it does under that alleged Queen Anne Grant. Unless there was some such paper how then could Queen Anne have possession of it to grant it to Trinity?

With this Lovelace transcript out of the way, my friends, your controversy stands solely and clearly upon the question of adverse possession. There is no doubt in the world, but what there have been several cases brought by your ancestors against Trinity Church in the hope of recovering this property, which have all been decided in favor of Trinity Church under the plea of adverse possession. Far be it from me to criticise anyone, but it does seem to me that there were many mistaken ideas in the heads of those who conducted the Bogardus side of the matter, but be that as it may you are confronted with those successful decisions.

You know when the Dutch inhabited the island there were some five or six boweries or farms which were called the Company Farms and one of these was directly south of the Bogardus farm. Now when the English came into Manhattan these company farms were confiscated and when the Duke of York was given a grant of all vacant lands on the Island this company farm, this particular farm, became known by the name of the Duke's Farm, later when he ascended the throne it became known as the King's Farm, and when Queen Anne ascended the throne it became known as the Queen's farm.

In the Bogardus grant the description is well defined, but not so in the Queen Anne grant, so called, for it has no northern or southern boundary, thus was opened the door for this religious organization to reach out and engulf the property on the north as far as she had a mind to go, or until at least someone powerful enough to stop it intervened. Suffice it to say here that Trinity did go beyond even the Bogardus Farm. Trinity has been able to hold this property for the past 250 years, she certainly has, and insists that she came by it rightfully, and yet she cannot show, she cannot produce a scrap of paper showing that the Bogardus heirs executed a paper divesting them of their rights in that property, the Bogardus Farm.

I claim that any such religious organization has no right to preach the gospel of the Lord Jesus Christ on Sunday and practice the wiles of the devil every other day in the week and in this plan now evolved you are not appealing to any court you are appealing to the christian and God-fearing public, and telling them the truth as to the taking of this property backed up by the certified proofs.

Doesn't it seem strange to you people that here were your ancestors fighting for American Independence, and Trinity Church palpably against it, and your forefathers lost their inheritance and the enemy gained it. That's the part that puzzles me, that with all the right on their side there could be such a situation created, and met with a claim which the law governing religious institutions does not recognize—adverse possession. What is adverse possession. Man made laws say it is pleading or taking advantage of one's own wrong. The bible condemns the robbing of one of their birthright, and then doesn't mention adverse possession. Therefore no matter which laws govern it is still a wrong.

You understand that when I defended Mr. Fonda I had the negative side of the question and did not have to give

particularly when that box rental was made imperative because of the carelessness of one of their carriers.

The question of the advance book subscription matter and the assessment matter being put to the meeting, it was, upon motion duly made, seconded and unanimously carried voted to raise the additional fund for the enlargement of the book by way of advance book subscription, and the money for the advance book subscriptions was to remain in the hands of the different treasurers of the different units until it was seen whether 1,000 books, advance subscriptions were taken.

Mr. Gridley again:

I want you people to understand therefore that I will not go any further with the publication work, or spend any more money for records until we see whether the 1,000 advance book subscriptions will be taken.

Now in regard to this post office business, it might be necessary to take some sort of action if there is any further interference. It might be necessary to lay our cards on the table and send the matter on to Washington for a complete investigation as to why this interference, and if that is necessary I want to be sure of your hearty support should the occasion warrant.

(All present pledged their support)

And now friends I think I have taken up enough time. There are others here who are ready to talk to you, and who I know you will like to hear. I thank you for your kind attention, for your loyalty, and I hope always to warrant your confidence and esteem.

Question: Can you find one word, in these speeches, that spells in the king's English, a promise of the evidence or documents, upon which these people "Could or would" recover any property?

Chicago, May 7th, 1925.

Descendants of Anneke Jans Bogardus

To say that I am surprised to find in Chicago such a representative body of A. J. B's is putting it mildly. You understand perhaps that when I had the Bogardus investigation in charge before my disbarment, I do not remember during that entire time anyone from Chicago being interested in the work I was doing. I suppose you have all heard how I became interested in the Bogardus matter. There was an old man by the name of J. H. Fonda who was indicted for fraudulent use of the mails in about the year 1912 I think it was. He had written letters stating that Trinity Church was not the owner of this Bogardus property, and that the descendants of A.J.B. were the rightful owners, and you will admit that his statements were right to the point, either the Bogardus were the rightful owners or they were not. The outcome of that proceeding was that the indictment was dismissed. The Judge did not pass on the title, but held that Fonda was old, and that he had an obsession that he was in the right in his statements.

I did not want to defend Mr. Fonda, and did all I could to get out of it, as I did not know anything about the matter, being an upstate lawyer, and I did not have the time to devote to an investigation sufficient to properly defend the man. I believe it was the dismissal of that indictment which caused many of the Bogardus family to write me and ask me to continue on and give them an opinion as to their status in the matter. After I had received several letters and a visit from some Cleveland folk, I gave them the facts that I knew nothing about it, that I could not go on with an investigation which would be requisite before I would give an opinion; if they cared to finance an investigation I would general it, but I could not do the work myself; that I would do it if they raised $20,000. Well they promised and I started the work, and when the Bogardus fell down, I was in and had become vitally interested and did not want to stop, and I didn't until I was disbarred. Understand small as it was Fonda's was the first victory the Bogardus have had since old Clinton Roosevelt got that bill thru the legislature, which effort died such an ignominious death. I like the Roosevelts, they believed in that most potential force in which I believe—Public Opinion—throw the light on the true facts of any matter, and watch the guilty scurry to cover.

Mrs. Wright has related the story of my disbarment. I myself prefer to let that chapter remain closed, until it can be opened to the world with the same paper cutter that will open the Bogardus story.

Public opinion has been to the Bogardus a closed book, chiefly because they have never organized with the idea of invoking it, and because their opposition got there first, and hence has filled the public mind with nothing but ridicule as to their position, and small wonder it is for whenever any effort has been made to make the Bogardus side of the story public there will appear in some of the newspapers and magazine headliners of ..... lays claim to $40,000.000. of property in New York. .....says her ancestor owned the ground whereon is built the Trinity Church, Wall Street, Singer Building, St. Pauls church, etc. etc. Men look back in history and find this is false therefore the Bogardus get another black eye, and everything they say is just as ridiculous as this claim. Truly the majority of these people simply know that it has been handed down to them to keep alive this matter, they simply have been told that Trinity Church now controls the property of their ancestor, and they have not bothered to locate the property in any way. True there are some who have been interested sufficient to go further than the average, but as I say the majority are hopelessly in the dark as to the true facts. This book therefore has its object to lay these true facts before the world as to the passing out of this title of the children of Anneke Jans into the control of Trinity, and there are some of us who have an abiding faith that when the true facts are known to this Christian World they will demand that Trinity is no longer fit to preach the gospel of Jesus Christ—in fact was it ever fit after the taking of this property? There are christians in this land of ours who truly believe that the church's mission on earth is to teach the word of God not the word of mammon, and that churchs who do not fear God and keep His commandments have no business to be classed as temples of the Almighty.

Churches are governed by God-made laws, laws which are very strict. Not like man made laws which say that to do thus and so is lawful under such and such a circumstance. No where in God's Holy Book is there any mention that to take that which belongs to another and keep it for a certain number of years is holy, righteous and proper; God's law says thou shalt not covet, thou shalt not take, both of which commands have been broken.

Anneke Jans the pioneer of this family, came to America with her husband and two children. After being here a short while Roeloff Jansen her husband was given a farm on Manhattan Island of some 62 acres. Roeloff died, and his widow married Everhardus Bogardus the Dutch Minister. The first Dutch grant has not been found, but the second and a confirmatory grant by the Dutch Governor

Stuyvesant was given to Anneke Jans Bogardus in 1654. In 1663 Anneke Jans died in Albany, and left a will dividing her property between seven children and two grand children who were to take the share that their mother would have taken if living. In 1664 Manhattan was taken by the English, and the first English Governor Nicolls confirmed the Bogardus property to the children in 1667. Therefore we have this grant years before Trinity Church was ever thought of. During the Dutch regime there were several boweries or farms owned by the Dutch West Indies Company, one of which was directly south of the Bogardus Farm. In fact in the description of the Bogardus Farm the southern line is to the posts and rails of the company's farm. When the English came into possession of Manhattan all ungranted land was given to the Duke of York, and this particular farm, the company's farm, became known as the Duke's Farm. When he ascended the throne it became the King's Farm, and later during Queen Anne's regime was known as the Queen's Farm. Therefore there was a time when the two farms were separate, when there was a King's Farm and a Bogardus Farm. Therefore the important feature is to find where the Bogardus deeded their property so that it came into possession of the crown of England, for of course Trinity insists that it took title to the whole of the property under color of the Queen Anne grant. This so called grant has no northern or southern boundary, and the description is quite vague for the transcript of such a valuable tract. I cannot in this brief space go into all the details, but I do want to point out to you one paper which came into the limelight in one of the cases brought by the Bogardus against Trinity—sometime after 1800—the Lovelace Transcript. It is claimed that the children of Anneke Jans all entered into this transfer of the property, all except Cornelius.

In the defense of Fonda I came face to face with this transcript, and I at once realized that if it was true that all but Cornelius signed this transcript there was no question but what the property passed under it, and it was the link. But, in one of the decisions I noted when the transcript was brought to light, and I then applied the acid test to find out whether this Lovelace transcript was a true and honest conveyance executed as it should have been. My investigations led me to the belief that the Lovelace transcript was a false record. I raised that question in the Fonda case I think for the first time in the history of this controversy. In view of my convictions in regard to this Lovelace Transcript I want you to understand that I entertain the opinion that the descendants of Anneke Jans Bogardus stand in the same position as though your parents had owned property years ago and had never conveyed, or attempted to convey the same.

Hence this stone which the builders rejected, for Trinity did reject this evidence even after producing it, becomes the head of the corner—for when then did the Bogardus sign away their rights to this property? After this my investigation followed along the lines of putting the acid test to all the cases brought and the decisions rendered thereon, Trinity relying in each and every one upon the defense of adverse possession. Of course it is not ethical for one to criticise the work of another in the profession, but certain it is that grave mistakes seem to have been made by the Bogardus attorneys, of which I shall treat in this publication. I haven't the least doubt but what some of the matters of my investigation which I made public were the cause of some of my troubles.

After my disbarment I went into the manufacturing business, the manufacture of fire extinguishers and fire appliances, and was enabled to build up a nice little business. However I found that my enemies followed me for I received a little tip off from a friend that the financial reports had mentioned that I was connected with the company—a disbarred lawyer. I realized that it would probably hurt the company for my name to be connected with it—hence ran the business in the name of someone else and buried myself beneath another name. However all contracts and matters which had to bear my signature were signed in my own name W. T. Gridley. I had severed all connection with the Bogardus, and did not know that any of them knew where I was. I was disbarred in 1918. In 1922 the latter part a delegation of some seven or eight people came to the plant inquiring for me. They were told I was not there as two of the number were recognized as interested in this matter, but unfortunately I came up just then and was recognized. They told me their business. It was to get me interested in this matter again. I refused to listen to them, and told them I didn't feel any too well disposed towards the Bogardus' for I felt that they had left me on the firing line, with the exception of a few. Their representative came to see me in all I think four times, until I took the matter under advisement, and said I would consider whether I could be of any assistance to them or not. This committee told me that they had gone up and down Broadway and everywhere to get someone to give them advice. It was understood that if I helped them they wouldn't use my name for I told them I had my business to look to, for that was all I had in the world; they promised no one should see me except the one person an attorney. The plans were made and were accepted, and the very first meeting they had to use my name—until the time came when I had to choose between my manufacturing business and this publication, the die was cast if I quit they would say I had sold out, and again I was after vindication, and I do believe that this publication is the only manner in which I can get it. Now I don't want any of the Bogardus money. I am not getting any compensation—all that I get is out of the sale of the book I am to receive 15% of the proceeds, and I think I have done pretty well in agreeing to give the other 85% to this organization, but so much faith have I in the sale of such a book that I am willing to trust to that faith for my future livelihood. All I asked them to do was to pay the actual overhead expense, rent stenographer, etc. to keep my name out of it. I soon learned what they had done, for one of the old followers sent me a newspaper clipping. Then later I found from letters that they had been promising a suit that old bugbear, when their agreement with me had been that there would be no false promises made. Several things entered into the severing of my connection with that old organization in September 1923. This new organization was then started by Philadelphia society.

I want you to understand therefore, that you people are contributing nothing for my expense save the rent, the stenographer, or rather as she is termed the secretary of the organization, and the expense of securing the records, etc. which go towards the publication of the book.

It is in order that you people will understand the nature of the work that I came out to explain it and ask you as man to man whether you are going ahead or going to give up this work, for I want those interested to make a decision one way or the other in order that I may know where I stand. We have for the past few weeks been making a canvass or crusade of Michigan and the surrounding units

of the organization where I have put the question squarely up to those interested in order that the work can either be closed right now or completed as speedily as possible.

You are all no doubt familiar with the fact that Clinton Roosevelt a very able lawyer in his day represented some of the Bogardus descendants, and it was through his efforts that the legislature of the State of New York made an investigation; that the committee reported that this property did not belong to Trinity Church. For some reason that matter was never followed up to the last stand, and I have often wondered was it because the Bogardus descendants failed to do their part in backing this man that he might prosecute your work to a finish.

You understand, no doubt, that this is a great undertaking, great I mean, in the amount of work involved. The work of the organizing of the family belongs of course to you people, and all the members of the organization have been asked to do is to stand the overhead expense, which has been made as reasonable as it possibly could be. I have to have some place to put the library, naturally I can't go around with my hat under my office (great laughter, when G. corrected it) and rents are not the cheapest in the City of New York. However, I have shopped around and I think I have a place most reasonable in rent for that City. Outside of the rent you have the salary of Mrs. W. $50 a week, and incidental expenses, such as supplies, transportation, etc.

I have been asked, in order to help Michigan and vicinity, to make a little tour around, which I have been doing for the past three or four weeks. I have enjoyed the trips, and Mrs. Matthews has been so kind as to furnish the transportation, and I hope my presence has done the organization some good.

We have two good crusaders in Mrs. Matthews and Mrs. Hibbard. The only fault I have to find with Mrs. Hibbard being, that when I do make a good point, a good home thust, as I think, in the very next meeting I find she steals my thunder, and I have to find a new one.

I know whereof I speak for we've been out together now long enough for me to catch on to this little trick of hers.

I find with these ladies along, I don't have much of the speech making to do. They help me out splendidly, and I certainly do not have to talk about myself.

(Was interrupted by some commotion over some picture taking).

It does seem to me from the meetings I have attended throughout Michigan there are a sufficient number of Bogardus descendants interested in this matter to put this book over. I say that the book is the one thing needful, that it is worth more to you than a hundred lawyers, for it will reverse adverse public criticism, it will show why you have taken this stand against Trinity for the last two hundred odd years, and it will bring to your assistance the God-fearing men and women of our land. Public opinion—the cure for all ills, and it is something your adversary has been able to have back of it for years. If you are determined to go further that is your business, for when the book is published there ends my work, but if the different units think well of it they can take that book to lawyers in the different localities where there are societies, obtaining the best talent obtainable and let these sort of men pass judgment and direct your future movements.

Therefore the matter rests in your hands, without your assistance to finance this book my hands are tied. I leave the matter in your hands, for the future rests upon your decision. I thank you.

Question: Can you find one word, in these speeches, that spells in the king's English, a promise of the evidence or documents, upon which these people "Could or would" recover any property?

Chicago, Sunday, Oct. 24, 1926.

Mr. Chairman and friends of the organization. We are back from a long trip through the west as you know, and while we are tired out jumping around from one place to another, we are happily tired for we feel that we have accomplished at least one thing. The west is fully apprised of the plans and purposes of your organization.

We had in our meetings through the west many bankers business men and some lawyers, and it has been told to me that many were the comments on the feasibility of this plan of yours of publishing your story to the world.

While I am tired I must compliment the ladies, for they have taken excellent care of me—they've watched over me good—I had to eat just so, and do this and that, and don't do this and that, and in all I feel very well taken care of indeed.

I cannot say too much of the work done by Mrs. Matthews and Mrs. Hibbard, they have had to work quite hard, for they would make a town before us, get out their notices, sit in the hotel meeting people, sometimes talking to the wee small hours of the morning, and then get the meetings in order, get down the lists of names for Pearce, and then do the major part of the talking.

I haven't got the complete number of the societies formed, but I am sure that the work was well done. It was a novel experience for the A. J. B's assembled at these different meetings to hear the plans of your organization. Throughout my western trip I reached the conclusion that the public had reached an adverse decision in your matter largely on the theory that they recognized that might is right. Well it is quite true that the courts in these United States have long found it feasible to serve a particular class, and the working class found it very difficult for a long time to secure justice, particularly in negligent cases, and it was the result of these injustices that led to organized labor. You people are doing the selfsame thing, you are organizing for a recognition and justification of the stand you have been taking and your ancestors that this property of your ancestor was wrongfully taken by Trinity Church.

I have been here in your midst before, hence the history of my connection with this matter would be superfluous. Our object in coming today is to give you some idea of what has been accomplished in the west, and I am sure that the two ladies have given you a good report on that. I haven't heard what they had to say, but from experience I know they haven't left much for me to tell in that regard.

Now back to the organization part of it, as I have said you are following in the footsteps of labor, in fact of the farmer, banker and others. In America today as you know you have the American Bankers Association, so that even the bankers see the efficacy of organization. I read in the papers while in Kansas of the American association having a meeting in Los Angeles—they were discussing the welfare of the cotton growers. The condition of the cotton growers was a serious matter to them, and it was considered the duty of this invisible government of ours to help out the cotton growers. I am referring to this

merely to show that any great movement finds its foundation and growth in organization. Over in Fort Scott Kansas—well I guess I will leave that out. The ladies have been telling me that I must taboo politics. I've had that two or three times, so I guess I'll be good and cut the politics.

Well what I particular want to say is that it was gratifying to me to have the people throughout our crusade compliment the plans of your organization. In fact out in Seattle one man said after Mrs. Matthews had explained the book proposition to him—well that's different—had you said your plans were a suit I would have had nothing to do with it. That man saw the worth of public opinion, without which we are as nothing, and it is to invoke the aid of public opinion that book is being published. You are all mindful of the fact for I believe I have told you people in some previous talk, that there have been suits brought in this matter, several of them, all of them decided in favor of Trinity. I bring these to your attention because there are times when we hear talk of suits, settlements and the like, as well as genealogy. My dear people if genealogy would have wrested this property from Trinity Church, how is it that your family haven't regained the lost property? I will treat in the book of these decisions all of which as I say are in favor of Trinity, to which she pleaded adverse possession. True it is that in one of the suits there cropped up a paper called the Lovelace transcript, and after putting the acid test to that document I reached the opinion that it was spurious. And I say if suits and settlements were so easy of accomplishment I don't think you would be meeting here today. For what? Well I'll tell you what I think you are here for—you believe with me that when the christian world knows the truth of your matter, backed up by the certified documents showing the original ownership of this property they will demand the cleansing of God's temple—they will demand that this church be no longer allowed to serve as the footstool of God upon earth—and they will demand that restitution shall be made to the descendants of Anneke Jans Bogardus—you believe that with me do you not, and that is the reason for your membership in this organization?

Well good people I believe also that your book will have a great sale. I have a right to that belief for I know what I have had to pay for books to help me in my research work on this book, and I think our book will be worth at least double what some of the books I have had to buy are worth. You will, I believe, not alone get your book, but you will get a handsome reward for the financial backing you have given to your plans, and if I didn't think so, I don't think it would have been good policy for me to have given these years to you gratis. I expect to make enough out of that book to make me comfortable for the rest of my days, or else I wouldn't have given my time to it. I think you will get a handsome return on your part of it, and I think you agree with me that this book will enjoy a great sale.

Now good people I am very tired, and I know the ladies are, so I am going to ask you to excuse me from any further talk. I shall be glad to answer any questions you may want to ask.

I want to thank you for your confidence and the loyal support you have given to your organization.

An episode occurred later of which Mr. G. asked me to make a note in the minutes. Mr. Tomkins said in substance that he was rather disappointed that Mr. Gridley had not defined adverse possession in regard to this matter. Mrs. Matthews got up and said that Mr. Gridley should be called back to hear what Mr. Tomkins had said, for he had not touched upon that matter, leaving it for the book.

Mr. Gridley returned and the question was repeated to him by Mrs. Matthews—

Mr. Gridley said—I am not defending or explaining adverse possession as regards this matter. That subject will be treated of in the book. I do not expect to change the law of adverse possession—there has always been an adverse possession law, and there always will be in every state in the union.

Question: Can you find one word, in these speeches, that spells in the king's English, a promise of the evidence or documents, upon which these people "Could or would" recover any property?

Milwaukee, Wisconsin, July 19th, 1926.

Members of the Bogardus family, and members of the Milwaukee unit. I have enjoyed listening to your speakers. You know when first Mr. Cole started in this work he had hard work to talk for five minutes, but the trouble is now he is so interested he can talk and never stop. It is a mighty hot night, and I want to be as comfortable as some of you so with your permission I will remove my coat.

I think you will all agree with me that after listening to the secretary there is very little I can say to enlighten you upon this proposition. She has pointed out to you very clearly the plans and purposes of this organization. She has pointed out to you very clearly that the sole defense of Trinity Church has been in all of the various suits that of adverse possession, but I will add that the subject is too complicated for anyone to attempt to treat of it in a summary manner, therefore I must leave the matter of this adverse possession of Trinity's to be treated of in the publication we are hoping to put upon the market in defense of the position taken for the last two hundred odd years by the Bogardus descendants.

One of the elements you have to fight is that this and that one will promise you people a suit under this and that circumstances. Even right now a paper called the Chancery Record is offering a free suit to the Bogardus descendants. What is all that for, simply for the purpose of having you sit back and await the outcome of that promise, and by that time you will have lost all interest in this movement.

When I first heard of this Bogardus matter, which was about the time of my defense of John H. Fonda, who had been indicted for fraudulent use of the mails, I learned that most of those interested in it were utterly ignorant of the main facts bearing on the matter. I learned that the want of knowledge was one of the factors for the belief in these promises of suits and settlements. Genealogies played a most important part in their plans. Some of these genealogists would promise to write your genealogies for $15. After sending it to you, they would write and tell you that they would file it in the City of New York in some court for $15. and you turn right around and send that selfsame genealogy back to them for which you paid $15. with another $15. to file it somewhere. Now did you ever hear of filing a genealogy in court? It is safe to say you filed it right back with the genealogist so that he could use it on his next victim.

When the committee of the National at Wilkes Barre came after me I was in the manufacturing business, manu-

facturing fire extinguishers and fire appliances. This was the business I took up after my disbarment. I handled that business successfully through the war, and also after the war during that awful period of depression. I did not seek out the Bogardus they came after me. When I made the plans for the book, for the publication of the Bogardus story for the Wilkes Barre Organization they accepted those plans, and I proceeded to work under those plans. It was not long before I met that same bugaboo promises of suit, settlement, etc. and I knew that unless that was stopped my connection with the Wilkes Barre people must end. I gave them the terms under which I would proceed further which they were unwilling to accede to, and I resigned from that organization, after which this new organization was started under the same plans and purposes—namely the publication of a book giving the Bogardus side of the story, giving the true facts of the passing out of this title which originally stood in the name of the Bogardus children.

I know it is hard for you people who take such a different view of things to understand why the plans for a book. Well, in the first place you people need knowledge, and in the second place no matter what your future plans would be, they are almost certain to entail some expense. Past experience shows that the Bogardus are not well to do people—they are struggling most of them to make a livelihood, and in my judgment this is the first plan ever made for the descendants of A. J. B. which would give them the return of the amounts they would be compelled to put in. From the sale of this book there should be sufficient raised to return to those who have financed this publication and its attendant work all that they have put in and a reward as well.

When these people first came after me I could not see where I could be of any use to them, and I told them so. I guess they came back three or four times. During this time I came to the conclusion that I could help you people by capitalizing your story, which is a mighty interesting one, and at the same time I might win my own vindication, for while being a disbarred lawyer I could not be connected with any litigation, I could and I had a perfect right to as an American citizen, to tell my story, giving the descendants of A. J. B. the benefit of my five years' investigation of this matter. That if you people were not content to stop at the publication of the book, you could take that book to good, able lawyers, men whose opinions amount to something in the community in which they live, and you could take their advice as to any further steps you might want to make. Then there was another feature to be gained by the book, which would do more for the Bogardus than a thousand lawyers, bringing a thousand suits, it would give you public opinion, which in your matter is badly needed for you have been floundering beneath the weight of adverse public opinion for years. You have been subjected to the utmost ridicule and derision, and the least public effort on your part is met with a gale of ridiculous criticism from the press. You know there has been a sort of a habit formed among the Bogardus descendants. A little band would get together, get a few thousand dollars, and then give it to some lawyer to go down to New York and bring back the property. The man goes down, and if he come back and tells you it is hopeless you right away make up your minds that the man sold out, whereas in truth and in fact the man found the true situation—he didn't know a thing about your matter—it would take years to investigate—meantime your money was spent, and he would not be able to remain in New York long enough to investigate so he came back and told you it was hopeless. That's happened lots of times. Then again while there have been suits brought by the Bogardus, and decision rendered, some suits have been brought by those who have made ridiculous promises that a suit was possible, and they had to bring that suit to make good. Some such suits have been brought, and have been dismissed for want of prosecution. This sort of a thing has done the Bogardus no material good you know, and has only made and built up more ridicule. This time you have started right, you have started to build up an organization. You have come to a realizing sense of the value of public opinion. You have joined this organization fully alive to the fact that there is no contemplation of lawsuits, simply the capitalizing of your story to the world, which will be a seller because the reading public is bound to be interested in the subject matter of your book. The church has always been able to gloss over the taking of this property by the plea that it was taken under that Queen Anne grant, and without the facts being published with that statement, you people appear as questioning the word of a church of God, but point out to the world that this edifice misnamed a church is nothing but a moneyed real estate shark, that it gobbled up your ancestor's farm without a scrap of paper on record showing that the Bogardus deeded that farm out of their possession, and that this church has pleaded the adverse possession law to protect that possession and see what the Godfearing public will do. I miss my guess if they don't rise up in wrath and demand the obliteration of this church, and restitution be made to that neighbor's descendant, whose children they despoiled. Do you know that on the crusade in the west many business men came to the meetings and listened to this proposition and the plans of your organization and have said—go ahead—now you've got a good working plan. You are on the right track now. I have said time and time again, that I would like to fill one of the largest halls in the United States with lawyers only, where I could get down to business and talk to them as man to man in regard to this matter, because it holds the utmost fascination for the legal mind, and once you really take hold of and investigate it, you simply cannot let it alone, so great is the power of its fascination.

You know while in the west I was confronted time and again with inquiries as to where the property was located. Some wanted to know was Trinity Church on the property—was the Metropolitan tower—all this showing me that you people have been entirely led into the erroneous impressions given in the newspaper articles. That Metropolitan Tower is about five miles away from the Bogardus Farm as located on the old maps, and the Bogardus farm only comprises some 62 acres. How on earth could the Metropolitan Tower be on this farm. Further Trinity Church is built on land given to it in 1696 for that purpose and has nothing to do with the Bogardus farm.

Now good people my plans do not entail the payment of any of the money contributed towards these plans to me. At present you are but paying the agreed overhead, such as rent, stenographer's services, etc. I am to get my reward out of the sale of the book, and that is one of the reasons I am anxious for the work to proceed, for I am to get fifteen per cent of the proceeds of the sale. The organization is to get the 85%. I think that is about as liberal a contract you could get from anyone. I think your story is of sufficient gripping interest to get the public to read, and I do not think you will have any difficulty in keeping the presses going.

The story of the Bogardus Farm is replete with injustice, and are you not forced to the conclusion that if Trinity had acquired this property through the proper channels, through a deed from the Bogardus children there would be no necessity for the defense of adverse possession. True it is that in one of the cases what is called the Lovelace transcript was presented purporting to be signed by all the Bogardus children but Cornelius. When I first learned of this paper was in the defense of John H. Fonda, and after putting the acid test to that document I reached the conclusion that it was a spurious record, prepared and presented to claim that the Bogardus Farm thus passed into the hands or control of Queen Anne so that she could later include it in the grant to Trinity Church.

Now my good people I think I have laid the plans before you plainly, and the reason for those plans, and the fact that my work is solely that of publishing your story. That is all that I can do for you. That is all I can promise you. My work begins and ends there. Whatever plans you make for the future must be reckoned without me, but be careful of whom you choose for your future guidance. When your National is formed after the publication of your book they will take care of the future plans of your organization—hence until that time take no thought for the future simply stick to the plans as now laid down. These plans at present contemplate the organization of societies from coast to coast. You now have two crusaders on the coast doing that work. This is necessary because you haven't sufficient members in the organization at present to contribute the necessary finances for those plans. We need your help in this regard. Of course whether you do or do not support this work is up to you, but if you do your part I promise to do mine. I thank you.

If there are any questions I would be pleased to answer them.

Question: Can you find one word, in these speeches, that spells in the king's English, a promise of the evidence or documents upon which these people "Could or would" recover any property?

Lenape Park, Pennsylvania, 1924.

Mrs. Chairman and members of the Bogardus Family, I appreciate the honor you have bestowed upon me in asking me to come to Lenape Park on this occasion. You all know this is the second time I have been to Lenape Park. My first visit was in 1923 when you were under the wing of the National Committee at Wilkes Barre, since which time many of the members of your family have insisted on continuing under my plans, which were originally made for the National, and accepted by them, but later repudiated; plans for the publication of the Bogardus story.

The reason for me consenting to come here today I thought I might do you some good in explaining those plans and the work that I have in hand, and what is more important the reason for the delay in getting this book in publication form.

You good people have been interested in this matter for some 100 years, or rather your parents before you. You have spent about fifty to one hundred years in talking about this matter, isn't that true? It has been a case of talk, talk, talk and no action. Now I came over here primarily for the purpose of telling you that it is time to back up that talk with the necessary, and let us get to action. It is absolutely necessary from my standpoint that this be accomplished, for I have given you nearly a year of my time without any compensation for it, and I have got to get this work finished. You know that is the trouble with you people you start some plan, then lag on it, and then it is the other fellow's fault if there is nothing done. My exchequer is running low, but I am asking for nothing from you people except support for the work of this publication for I have always said that whatever I do in this matter shall be without charge. I don't want any of the Bogardus money, I want to get my money out of the sale of the book, but I do expect you to pay for the expense of getting it out. If I had the money I'd get it out myself, but unfortunately I haven't the funds and must wait upon you people. Don't make that waiting too long. Tell me why it is you cannot get back of this proposition? Have you lost faith in it, if you have why don't you tell me, and let me get back to my occupation? This may not sound good to you, but I am talking plain business.

I am sitting practically still waiting for the money to go ahead with this work. Are you interested in it or not. I must know.

You are all more or less familiar with the fact that there are thousands of people who know nothing whatsoever of the true details of this matter who venture an opinion as to what the details and the facts are, and these are banded from mouth to mouth until your true story, your true facts are buried beneath an avalanche of ridiculous statements. Many of these facts have been started in magazines, newspapers and the like, and it is these statements which have made you people the laughing stock of the public for years. How many of you have read that this and that one is claiming millions of dollars worth of property in New York. The Bogardus Farm upon which is built the treasury building, Wall Street, Trinity Church, Singer Building, Woolworth Building, Metropolitan Tower. The Metropolitan Tower is about five miles from Trinity Church, and the Bogardus Farm only comprised 62 acres. Cannot you see how ridiculous these statements make you people?

Oh I know, I haven't been interested in this all these years for nothing. I have a stack of these newspapers and magazines giving these kind of stories. Why you people cannot even get a notice printed in the newspapers. Mrs. Lutz was telling me what trouble she had in even getting a notice printed about this picnic.

Why all this propaganda against you? Now you have a plan to print your side of this story. Why stop you? If there are no facts to be gathered which would show the public that the Bogardus were deprived of their inheritance, why then use propaganda against the organization?

Why not help the organization with a donation to help publish the book? It seems to me that it would be a Godsend for the Bogardus family and the world to have all the true facts backed up by certified proofs in book form that the many ridiculous claims would be settled forever.

You talk about your father and your grandfather having spent so much money fruitlessly, yes and it was handed down to you and perhaps you've spent some, and if the true facts are not laid bare in some such manner as the plans and the purposes of this organization propose it will be handed down to your children. I did not take up this work with the idea of prolonging it indefinitely, allowing it to drag along, but with the idea that the funds could be gathered in some three months. Having my manufacturing business I have been enabled to wait, but I am face to face

with the situation where I must decide which I am going to stick to, this or the manufacturing business, for because of the broken promise of keeping my name secret from this work, I find that my connection has injured me to some great extent.

Now good people I have made my position clear. It rests with you. If you'll get back of this I promise to finish my part of it right up quick, but it takes money, something I haven't got myself, but one thing, either do it or advise me that you are through.

I thank you.

Question: Can you find one word, in these speeches, that spells in the king's English, a promise of the evidence or documents upon which these people "Could or would" recover any property?

From an original painting by William Huff, Billings, Oklahoma. in possession of G. S. Wright

CHAPTER EIGHT

Trial

The first requisite for a fair trial is an unbiased judge and jury.

In Eagan v. U. S. 287 Fed. 958

The court said:

That the trial judge should be so impartial in the trial of a criminal case, that the jury are unable to detect his personal conviction as to the guilt or innocence of the accused. And his conduct and demeanor may be such as to deprive accused of a fair and impartial trial, even though no single instance involve error, so prejudicial as to warrant reversal.

The judge should be careful not to do or say anything during the trial to reflect on a witness, or to express or intimate in any way opinion on his credibility. A conviction has been reversed because the judge, after asking a witness if she knew how long three minutes were, took out his watch, asked her to tell three minutes, and then announced that what she called three minutes was only forty-five seconds.

Burke v. People, 148 Ill. 30, 35 N. E. 376.
Jefferson v. State, 80 Ga. 16, S. R. 293.

So, if the judge, either during the examination of the witnesses, or at any time during the trial makes improper comments upon the evidence, it may cause a reversal.

Kelly v. State, 33 Tex. Cr. R. 31, 24 S. W. 295.
People v. Kindleberger, 100 Cal. 367, 34 Pac. 852.
State v. Clements, 15 Or. 237, 14 Pac. 410.
Sharp v. State, 51 Ark. 147, 10 S. W. 228, 14 Am. St. Rep. 27.
People v. Moyer, 77 Mich. 571.
Allen v. U. S., 115 Fed. 3.

Adler v. U. S. 182 Fed. 464:

While it is the duty of the trial judge in a criminal prosecution in the federal court to facilitate the orderly progress of the trial and to shorten unimportant preliminaries and discourage dilatory tactics of counsel, it is improper for the judge to take part in the cross-examination of defendants' witnesses in such a manner as to impress the jury with the idea that the judge had a fixed opinion, that accused was guilty and should be convicted.

Hobart v. U. S. 299 Fed. 784:

It is error for a judge to make his belief in a defendant's guilt so evident by his rulings and charge that the jury cannot fail to be constantly affected by it throughout the trial.

In Hawkins v. U. S. 116 Fed. 569:

Where defendant was indicted with two others for robbery, one of whom had been tried and convicted, and while examining a juror, defendant's counsel asked if he had an opinion as to the guilt or innocence of the one so convicted, a remark by the court in answer to such question that that "That is one of the things that is an established fact in this community," was error.

Question: Was this declaration by the court equivalent to making himself a witness? If so, did it disqualify him from proceeding further with this case?

THE COURT: Have you ever heard or read or discussed the Bogardus estate?

JUROR EDGAR: No.

THE COURT: The Anneke Jans Bogardus estate?

JUROR EDGAR: No, I don't think I ever heard of it.

THE COURT: Do you belong to the Episcopal Church?

JUROR EDGAR: No.

THE COURT: It was an Episcopal Church; that was decided in court that Trinity Church, which is an Episcopal Church in New York, that this property belonged to, and not to the Bogardus heirs. That has been settled and decided. There is not any question about that. It has [31] been fully settled in court many, many years ago, that the property does belong lawfully to the Trinity Church and not to the Bogardus heirs. Have you ever, or any members of your immediate family, been a party to a business transaction which resulted in loss, which you thought there was fraud in connection with it?

JUROR EDGAR: No, sir.

United States District Attorney's Duties

In 2 Ruling case law, under title, "Argument of Counsel" (page 420, sec. 17) it is stated:

"Counsel should never in the course of an argument state facts that are based on his own personal knowledge only. If he desires to get such facts before the jury he should take the stand and present them in a legitimate manner; for although in the heat of argument, fervor and partisanship are to be expected from counsel, this cannot justify a departure from the field of argument and discussion of the facts disclosed by the evidence into the field of testimony to establish other facts."

In Lowden v. United States, 149 Fed. 673, the court said:

A defendant should not be subjected to a trial on the unsworn statements of an attorney conducting the prosecution, even when such statements are relevant to the case, for he would by this procedure be debarred the right of cross-examination and would also be deprived of the right of offering evidence in rebuttal. It is not within the legitimate province of counsel to state facts pertinent to the issue that are not in evidence; nor can he assume in argument that such facts are in the case when they are not. And counsel cannot be permitted to make a statement of facts, which, under the rules of evidence, would not be received if offered, the natural tendency of such facts being to influence the finding of the jury. To adopt any other view would enable the advocate to put before the jury for their consideration statements not tested by cross-examination and facts which the law excludes.

32-55
OPENING STATEMENT ON BEHALF OF THE GOVERNMENT [56]

MR. WATKINS: May it please the Court and members of the jury: The Court has explained to you in his effort to ascertain whether or not you are qualified to sit as jurors in this cause in a very general way the nature of this proceeding. In other words, he has explained that this is a claim on the part of the Government that a certain scheme was made by the defendants, Willis T. Gridley and Gladys Wright

for the purpose of defrauding certain people, and that in that scheme the particular defendants used the United States Mails in an effort to carry the scheme into [57] effect.

Now at the time Anneke Jans Bogardus owned this farm in New York, for the most part the Dutch were in possession of the City of New York, and later the English came in and gradually acquired property interests which had formerly belonged to the Dutch people. Now Anneke Jans Bogardus was Dutch. The property owned by her was a farm of 62 acres, which is located around Broadway and Wall streets in the City of New York, that valuable property which is now occupied by such buildings as the Singer Building and the Woolworth Building and Trinity Church, the United States Treasury Building and other valua- [58] ble property, the Cunard Line Company's building, in that downtown New York district, in and about the New York Stock Exchange.

In addition to this particular 62 acre farm which is in the heart of the business district of New York City, it was also claimed that Anneke Bogardus owned other property in the City of New York. I think one farm that she was supposed to have owned was a farm of some 189 acres, also now valuable property in the heart of New York City.

We will also show that there was a claim that a certain portion of the City of Albany, New York, was the birthplace or homestead of this woman, and it is claimed that a certain portion of Albany now occupied by the state capital of the State of New York was a part of her property and certain claims were made that the heirs of this woman owned that. There is a certain building in the City of Albany [59] that bears a tablet stating that this was a portion of the estate of Anneke Jans Bogardus and the place where she had formerly lived.

There were also various claims made that the heirs were entitled to certain sums of money which were deposited in certain banks in Holland.

The Government's proof will show you that in furtherance of this plan societies were organized by these defendants; that a national organization was organized with headquarters in Wilkes-Barre, Pennsylvania, and that this national organization employed Mr. Gridley to work for them in an effort for him to accumulate all of the necessary documentary proof whereby the interests of these heirs in and to this property could be established. The Government claims and will prove to you that this defendant Gridley told these heirs that he had all the proof where he could get it by the necessary work to show the claim of these heirs in and to this property, and that he prevailed upon them that if the proper amount of money were expended for the purpose of accumulating this proof and getting it all in shape that it would be a very simple matter to go into a court and establish the claim of these heirs in and to this property. He likewise as a part of his scheme explained to these people that, of course, Trinity Church Corporation having apparently the right and title to this property were fighting him at every turn of the road in his effort to establish the claim of these people to their property, [61] the property which was rightfully theirs.

Now as I say, the first organization that we will explain to you by our evidence was this national organization which had its headquarters in Wilkes-Barre, Pennsylvania.

The United States District Attorney has here stated:

"The government's proof will show that in furtherance of this plan societies were organized by these defendants; that a National was organized with headquarters in Wilkes-Barre, Pennsylvania."

But see the testimony of the first government witness, Roat:

Q. Now by the National what do you mean?

A. Well, perhaps I could explain it better in my own terms. Around about Wilkes-Barre there were several societies who claimed to be heirs of the Anneke Jans Bogardus estate, and they had several meetings, and on account of me having an aunt who was supposed to be a direct descendant, I was asked. And on account of my aunt I attended a couple of the meetings, and from their method of procedure I felt that they were not organized along strict business lines and made some suggestions. I made suggestions as to business forms of conducting their affairs, and suggested an association meeting should be held to get the different individuals or smaller societies together under one head, which was done, and a national meeting was called in December of 1922 in the Y. M. C. A. Building at Wilkes-Barre, Pa.

Q. Did you attend that meeting?

A. Yes, sir.

Q. You say that meeting was in December, 1922?

A. Yes, sir.

Q. I will ask you whether or not Gridley was in attendance at that meeting?

A. No, sir.

THE COURT: That was before you met Gridley do I understand? That was before you met Gridley?

A. Yes, sir.

Q. (By Mr. Watkins): At that time you did not know Mr. Gridley at all?

A. No, sir.

Q. In connection with this meeting in December, 1922, and the National organization, was an organization at that time formulated?

A. Yes, sir.

We will show you that at one time or another the claim of the defendant Gridley was that the heirs who were members of his society, the society that he was forming, would, if they would stick to this thing, and by the publication of this book, educate the public to get behind this thing and aid it, rather than attack it, that all of them would be on easy street.

Now in a general way that is the story, that is the scheme that he had, the scheme where first he was going in and get this property back for these heirs; second, when the people started to wonder when this litigation was going to start, and when they would see some court action, he realized that there was no way for him to proceed in court, then the book proposition came along, and he had to educate them and educate the public so that the public would understand what it was all about; then came this book proposition, and after that a crusade to get more members. They did not have enough people, paying into the treasury, they had to get more money. As a part of it all, there were, as we will show you, certain letters mailed here in the City of Detroit delivered in New York, received by Gridley, some of them containing drafts or checks endorsed by Mr. Gridley, and it is in that way that the Government claims the right to prosecute this man for using the United States mails in a scheme to defraud. [66]

Watkins says, we will show, a promise to show, which Webster says is a something sent beforehand to indicate that something unseen is at hand. A declaration giving to the person to whom it is made the right to expect and claim the performance of the act.

Did his first witness refute his statement?

In Hall v. United States, 150 U. S. 76: The judgment of the trial court was reversed because the district attorney was permitted to make an argument, against the objection of the defendant, not based on evidence which tended to prejudice the jury against the defendant. We would not embarrass free discussion so essential to the proper administration of the law. We would not regard many hasty and exaggerated expressions of attorneys made in the heat of debate which are not expected to become factors in the formation of the verdict. We wish to follow established rules and to avoid introducing another element of uncertainty in the trial of criminal cases, by making a new precedent for the reversal of judgments. The difficulty of drawing a line between legitimate and improper arguments, admonishes us that the trial judge often has a delicate and difficult task imposed on him, but under the circumstances of this case, considering the character of the argument, the refusal of the trial judge to interfere at the time the objection was interposed, or to correct the probable effect of the argument by a subsequent instruction, and because it does not appear affirmatively to us that no injury was done to the defendants, we are constrained to hold that the judgment should be reversed and a new trial granted to both defendants.

In Williams v. United States, 168 U. S. 382:

The defendant, an officer of the United States, was convicted of extortion in exacting money from Chinese immigrants for permission to land and remain in the United States. The defendant proposed to show by witnesses that, while he was acting in such official position, there were more females sent back to China than ever were sent back before or after. The representative of the government objected to this evidence as irrelevant, saying in open court, and presumably in the hearing of the jury:

"No doubt every Chinese woman who did not pay Williams was sent back."

The Supreme Court said:

"The observation made by the prosecuting attorney was, under the circumstances, highly improper, and not having been withdrawn, and the objections to it being overruled, by the court, it tended to prejudice the rights of the accused to a fair and impartial trial."

Traverse or Petit Jury

Mrs. Edna Reuling, 130 Fern Street, East Lansing, Michigan.
C. H. Kempton, Hillsdale, Michigan.
Agnes Chamberlain, Farmington, Michigan.
Grace Chamberlain, 166 Grand Street, Highland Park, Michigan.
Anna Braun, 236 North Gratiot St., Mt. Clemens, Michigan.
Irving Ellis, R. F. D. No. 2, Washington, Michigan.
Julia Matthewson, Northville, Michigan.
Louis Broughton, New Haven, Michigan.
Sarah C. Goldberg, 1464 West Grand Blvd., Detroit, Michigan.
Edith Buchanan, 9340 Waterloo St., Detroit, Michigan.
Ethel Cook, 799 25th Street, Detroit, Michigan.
Fred S. Walls, Davisburg, Michigan.

Amazed at this conviction, upon the evidence adduced upon the trial, members of the Lansing unit interviewed Mrs, Edna Reuling, 130 Fern Street, East Lansing, Michigan, to ascertain the reasons she voted for a conviction.

These key affidavits will explain.

KEY

1 Signifies one member.
1a Signifies another member.
1b Signifies another member.
2 Signifies name of juror interviewed.
3 Signifies any address or place mentioned.
4 Signifies district attorney when mentioned by name.
5 Signifies post office inspector when mentioned by name.
6 Signifies a judge.
7 Signinfies miscellaneous persons mentioned by name.
8 Signifies name of defendant's attorney.
9 Signifies notary public.

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

(1), being first duly sworn deposes and says, that she resides at (3) in the above mentioned county and state.

That on the 21st day of May, 1929, she accompanied (1a), and (1b) to the home of (2), (3), in order that she may tell the friends of your deponent the same story told to your deponent in regard to the trial of Mr. Gridley and Mrs. Wright, as the said friends were very reluctant to believe what deponent had told them in regard to the interview deponent had had with the said (2), wherein the said (2) had stated to your deponent the reasons the jury which sat upon the trial of the said Gridley and Wright had reached the decision that they were guilty.

Deponent rang the bell at the residence of (2) and she came to the door herself, and deponent explained to her that she wanted her friends to hear what she had to say about the trial and the decision, and the reasons for such decision, whereupon she said she would be glad to talk to them and took them into her living room.

(2) is a very fast talker and does not give one much chance to say anything.

She started in at once and said that it was very plain to the jury that it was just a scheme to get the members money, and that if it wasn't such a scheme they would not have asked for the book to remain in their homes for a year before putting it before the public; that if Mr. Gridley was on the square he would not have had his mail come to a post office box instead of to his place of business; that Mrs. Wright signed for all of the letters and the registered packages; that the government had tried to get his signature, and at last they managed to get it by having him sign an order authorizing Mrs. Wright to sign for all the mail and the registered packages. (2) further stated that Mr. Gridley was disbarred, and it was for his dealings with the Bogardus matter; that her father was a lawyer, and her brother was a lawyer, and she had been raised in a law atmosphere, and she knew very well that a man had to do something very grave in order to be disbarred. She said Mrs. Wright signed for all the mail, and that she and Mr. Gridley lived together in the same apartment in New York and also in Detroit at the Hotel Fort Wayne; that she had talked with (7) secretary about that, and she condemned them for living that way, and said that she would not think of staying at the same hotel with the (7) unless his wife was along with them.

(1a) asked (2) upon what they based their verdict, and she said five things counting off on her fingers — first that he would not sign any letters, second that he did not put the manuscript or books in evidence, third, that he was a disbarred lawyer, fourth that neither Mr. Gridley nor Mrs. Wright would go on the stand; that they did not dare go

on because of the way they lived, and fifth, that he was a disbarred attorney.

(2) seemed quite willing to talk to us. She did not need any urging, in fact it was hard to get a word in anywhere during the conversation.

(2) further stated that (4) had said he was wild to get the defendants on the stand, for then he could make them swear against each other for he wanted to get them under the Mann Act.

Deponent asked (2) how many ballots had been cast, and she said that the defendants would have been convicted on the first ballot if it had not been for two men who went in there for the sole purpose of voting against conviction on the first ballot; that then there was a second vote taken and they came to an agreement at once; that these two men had said that it was too serious a charge to convict on the first ballot; that they wanted to show that they had some interest in the case, and that they had discussed it.

(2) further stated that she did not think Mr. Gridley had any rare books, or any that he could not go to the library and get, and that the book sellers had said they would buy them back at any time; that he must have had a hundred thousand dollars, and that he had $28,000.00 in the Detroit Banks right then, and still Mr. Gridley pleaded poverty.

Deponent asked (2) about (7) the man who ran the sanitarium, and she said that he did not testify, but that his son had been subpoenaed by the defendants. Deponent further says that this seems to be a different story from what (2) had stated previously to your deponent.

(1a) said that she had been informed that one of the jury had been heard to say towards the last of the trial that she was ready to give in; that she wondered what she meant, and (2) said that no doubt the lady meant that she was so completely tired out, because they had been on jury duty since the last November.

Deponent then asked (2) what the (6) meant when he said that he did not want any disturbance when the verdict was given, and (2) said it was very plain, that anyone could see that it was fraud, and one could not expect anything different.

Deponent said to (1a), "Why (2) says that Mrs. Wright is a British Subject," and (2) said "Yes, she was very proud of that fact, but she did not realize what she is up against. At the expiration of her trial she will be deported and the English Government will be notified to keep her over there."

(2) stated that the (6) was kind and considerate that he had offered to subpoena any witness over one hundred and fifty miles away, but that the attorneys would not give their names; that even after that they decided that they wanted to take depositions, and the (6) allowed them to do that; that he allowed them to bring in all the testimony they wanted; that he was not going on technicalities; that all the defendants witnesses testified to the same thing. (2) testified that (7) was one of the members who had burned the manuscript; that she was a well educated woman and she did not understand why she should be mixed up in it, but that usually in a case like this the officers are as deep in the thing as the leaders are who are indicted.

(1b) said "What about burning the manuscript?" and (2) replied "Yes, there were about forty mixed up in that, and one of them admitted writing the demand and that great big man was in it too, and (7) and that widow from California.

(2) further stated that the jury had discussed the fact that the plans of the organization were to publish a book at present, and they decided that meant that they were going to bring a suit in later years.

She said it was going around that Mr. Gridley would never serve his term, but that she would be greatly surprised if he did not.

(2) stated that there was a (7) at the college who was interested in the Bogardus matter now; that up to this time she has never paid any attention to it; that she simply treated it as a family tradition; that she was a very bright woman.

(1a) said to (2) when we rose to leave that she was not satisfied that the jury had given these people a square deal, or that in substance, and (2) said to her indignantly, "Well I would not throw any more good money after poor."

(2) followed us out and asked us where the (7) were, and we told her that they were living at the same address so far as we knew, and (2) said "Oh, no, I think they are in Chicago." She then asked us if we had seen a Billboard lately as she would like to get hold of a Billboard, and we told her we had not seen one since the trial.

Further deponent sayeth not.

(1)

.....

Subscribed and sworn to before me this 4th day of June, 1929.

(9)

.....

Notary Public, Lansing, Ingham County, Michigan.
My commission expires Feb. 24, 1931.

KEY

1 Signifies one member.
1a Signifies another member.
1b Signifies another member.
2 Signifies name of juror interviewed.
3 Signifies any address or place mentioned.
4 Signifies district attorney when mentioned by name.
5 Signifies post office inspector when mentioned by name.
6 Signifies a judge.
7 Signifies miscellaneous persons mentioned by name.
8 Signifies name of defendant's attorney.
9 Signifies notary public.

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

(1a) being first duly sworn deposes and says:

That she resides at (3) of Lansing, County aforesaid.

That in company with one (1) and (1b) she called on one (2) who resides at (3), whom your deponent knew had sat on the jury in the Bogardus case which had been tried in Detroit during the months of February and March, 1929, for the purpose of getting the said (2) views in regard to the Bogardus matter, and the reasons for her having rendered the decision when sitting upon that jury.

Deponent further says that the said (1) knew the said (2), and introduced herself and (1b) to the said (2); that your deponent informed the said (2) that she had come for the purpose of getting her opinion upon the Bogardus trial. (2) then informed your deponent, among other things, that it was plain to her that the whole plan and purpose was a scheme to defraud the people of their money.

(2) then went on to state "Is it possible you people do not

understand the meaning of adverse possession; that nearly every state in the Union has a law covering this, and any good lawyer knows about that law and how it works; the laws governing the statute of limitations are different in some states. New York State is twenty-one years. Mr. Gridley knew this because he had been a lawyer. Do you people know that Mr. Gridley is a disbarred lawyer?" We all three answered that we did. (2) then went on to state that she was the daughter of a lawyer and the sister of another, and that consequently she had been raised in the atmosphere of the law; that she knew the Bar Association was behind any honest lawyer, and that a lawyer had to do something very grave to be disbarred; that after Mr. Gridley's disbarment he would not sign for his mail, letters or vouchers or anything and that Mrs. Wright always did this.

Deponent asked (2) if anyone had ever seen Mr. Gridley's signature, and she said "No, that the Government could only dig up one; that they had made Mr. Gridley sign a written order so that Mrs. Wright could sign for his mail."

Deponent then asked if that was since the indictment, and (2) said "No, that it was about two years ago."

The said (2) stated that Mr. Gridley did not have any mail sent direct to his place of business, but to a Post Office Box, and added "Who ever heard of a business man receiving his mail that way."

Then (2) started on what she thought of Mr. Gridley's and Mrs. Wright's character; that they lived in the same apartment in New York City and in the same apartment in the Fort Wayne Hotel in Detroit, and added "You know no respectable woman would do that."

(2) then started to relate incidents of the trial. She said that (8) one of the defendant's attorneys had promised to do so many things that he did not do, that he had promised to put the defendants on the stand; that he had promised to produce the manuscript.

Deponent asked (2) how they could have used the manuscript for evidence?

The said (2) replied "By putting one of the defendants on the stand. (4) was wild to have that very thing happen, because he wanted to spring the Mann act on them. Not being married they could be made to swear against each other, and the (6) in his charge told the jury to consider all the surrounding conditions, and the way that Mr. Gridley and Mrs. Wright lived was one of them."

(2) said that (6) was very kind and broadminded about everything; that he offered to send for the defendants' witnesses living over one hundred and fifty miles from Detroit; that the defendants' attorneys would not give the names and addresses of any of these; that then (6) was kind enough to let them take depositions and read them in court, but that these depositions were worthless; that they did not prove anything.

(2) further stated that nothing was proved to show that Mr. Gridley had any rare or unusual books, nothing but what could be found in any reference library; that the only things he had bought from these booksellers were things that could be readily turned into cash; that he seemed to have bought them for his own convenience so that he would not have to run around and look up the facts pertaining to his book. Then she added that she did not believe he had even a scratch of a pen for the book.

Deponent then asked the said (2) if it had taken the jury long to reach an agreement, and she said "No it was very plain." She then went on to count on her fingers the different things which caused the conviction—first, (taking her little finger) neither would go on the stand, second the manuscript was not brought into court as evidence, third, he was a disbarred lawyer, fourth he never signed his name to anything, and fifth their living conditions.

(2) went on to state that she had talked in the corridor of the hotel with (7) secretary between the time of the verdict and the sentence, and that the young lady had said "I would not think of staying in the same hotel with (7), unless his wife was along" that she would walk the streets all night before she would do that.

(1) then said that she had understood that some of the organization witnesses were ridiculed, and (2) said "No, I do not think so. The (6) did not waste any time on any who seemed to be leaders, such as (7); that they were as deep in it as the defendants; but that (6) had tried to show the rest of them where they had made a big mistake in putting any money into their scheme.

(1b) asked what all the row was about burning the manuscript, and (2) said, "Oh the (6) took all their names, and they will have to go before the Grand Jury, and they will hear more about this." She added "Every leader who was put on the stand had destroyed their books by burning them, so that when it came to the time when Mr. Gridley acknowledged the manuscript was burned the (6) was pretty peeved, and I could not blame him."

Deponent then got up and as she was passing out said to (2) "The reason I was so anxious to find out about the verdict was because some of our members do not feel satisfied and wanted both sides of the story and I myself don't feel convinced that he got a square deal."

(2) reply was "Well, I hope you will not send any more good money after poor. (2) followed us to the car, and when on the walk said "Do any of you know where (7) folks are, you know after you sit and listen to a thing for four weeks you would like to know how things come out." We told her that none of us knew where the (7) were, and then she asked us if we had had a Billboard lately, and added that she would like to get hold of one. We all thanked her for her talk, and (2) said that she would be glad to talk to any of the members at any time, and explain all about it.

Further deponent sayeth not.

(1a)

.....

Subscribed and sworn to before me this 4th day of June, 1929.

(9)

.....

Notary Public, Lansing, Ingham County, Michigan.
My commission expires Oct. 20, 1931.

KEY

1 Signifies one member.
1a Signifies another member.
1b Signifies another member.
2 Signifies name of juror interviewed.
3 Signifies any address or place mentioned.
4 Signifies district attorney when mentioned by name.
5 Signifies post office inspector when mentioned by name.
6 Signifies a judge.
7 Signifies miscellaneous persons mentioned by name.
8 Signifies name of defendant's attorney.
9 Signifies notary public.

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

(1b), being first duly sworn deposes and says, that she resides at (3), in the county and state aforesaid.

That she accompanied (1) and (1a) on the 21st day of May, 1929, to the home of a certain party whom she had been informed had served upon the jury at the time of the Bogardus matter had been tried; that the party's name was (2), (3); that she went for the purpose of gathering some information as to the cause of the conviction of Mr. Gridley and Mrs. Wright and the grounds upon which the said verdict was reached in order to govern her future connections with the organization.

That she found the said (2) more than willing to talk, in fact it was hard to get a minute to ask her any questions she was so full of information in regard to what she knew of the matter.

She started to explain the law of adverse possession, and said that Mr. Gridley was a very smart man and should have known all about such a law; that all states had a law of limitations, but that some states were different to others; that in New York it was twenty-one years.

She said that it was quite plain to her that it was simply a scheme to get the people's money; that she did not believe Mr. Gridley had a scratch of a pen towards the book. She said that Trinity had paid the taxes on this property all of these years, and that would make the property belong to them; that Mr. Gridley was a disbarred attorney and that they must realize that the Bar Association was behind any honest lawyer, and that Gridley must have done something very grave in order to be disbarred; that her father and brother were lawyers, that she had been raised in an atmosphere of the law, and understood these things.

(2) said that Mr. Gridley did not have his mail sent to his place of business, but into a post office box, and that no good business man would do that.

(1a) asked her if they had Mr. Gridley's signature, and how they obtained it. She said they did not have it at first, but that there was a way to get it; that they had made him sign an authorization to let Mrs. Wright obtain his mail for him; that the government had been trying to get this signature for two years.

(1) said "Tell them about how they lived" and she said that Mrs. Wright and Mr. Gridley lived in the same apartment in New York, and in the same suite at the Hotel Fort Wayne, and "You know no respectable woman would do that."

(2) asked your deponent if she had been at the trial, and deponent told her she had not, and she then went on to relate different incidents of the trial. She commented on the fairness of (6), and his broadmindedness; that he had offered to subpoena the witnesses for the defendants who lived over one hundred and fifty miles away, but that the defendant's lawyer would not give them the names. That afterwards defendants' attorney wanted to send to New York and take depositions from these witnesses, and the (6) told them that he had offered once to bring their witnesses for them, but he still allowed them to take the depositions.

(1a) asked (2) if (7) was on the stand, and (2) said "No, but his son was, for the defendants." She stated that (7) and his wife was on the stand, but that (7) testimony did not amount to much because it was just an echo of her husband's testimony, and it was plain to be seen that she had been coached.

She further stated that (7) testified and that every officer on the defendants' side when they went on the stand said they had burned their books; that it was a funny organization that did not keep books; that you could go back in the Star Lodge as far as 20 to 25 years and find out things from the books.

Deponent asked the said (2) if she had found out during the trial what the book would contain, and she said that some one said it would be used in public schools as a text book; that just imagine any boy or girl paying $25. for a text book; that they asked if it was to be used in Kindergarten or the college.

(2) said that she did not think Mr. Gridley had intended to do wrong in the first place, but that the money came rolling in so easy that he kept on. She thought at first he was an honest man when he had promised the book of 480 pages, but she thought the officers were in it for all they could get out of it.

(2) then said "Why, Mr. Gridley has a wife living, and Mrs. Wright a husband from whom each were separated; that when the Judge was questioning Mrs. Wright she said she was a British subject; that he asked her that so that when she had served her sentence they could deport her to England. She stated that the Judge asked them their fathers' and mothers' names, where they were born, and all those sort of questions; that he always asked those questions after sentence; that when he asked Mrs. Wright if she was a British subject she took off her hat.

She said that (4) was wild to get the defendants on the stand so that he could hold them under the Mann Act.

(1a) asked her how they reached their verdict, and she said that (8) had said that he would bring the manuscript into court, and that Mr. Gridley and Mrs. Wright would take the stand; that none of these things were carried out; that made the jury suspicious, for what they wanted was to get Mrs. Wright and Mr. Gridley on the stand so as to get them under the Mann Act, for they could be made to swear against one another as they were not man and wife.

Then she made the points, indicating on her fingers, upon which they rendered the verdict of guilty: First that they neither went on the stand, second the manuscript was not brought into court; third that he was a disbarred lawyer; fourth that he never signed his name to anything, and fifth the way the defendants lived.

(2) further stated that it was no use for the defendants to appeal to a higher court; that when they went into the jury room two men voted against conviction because they thought the charge too serious to handle lightly, but they would have been convicted on the first ballot if it had not been for that; that she had considered them guilty from the first, as her ballot would show; but that two voting against conviction would show some consideration of the matter. (1a) asked her how many times they voted, and (2) said "Twice, and all voted the same the last time."

(2) stated that the books Mr. Gridley had obtained for the library were not valuable, for they could be found in any state library; that the maps they had in court were just the maps that anyone could obtain and did not amount to much.

(2) further stated that after the verdict she talked with (7) stenographer in the corridor, and that she thought it was ridiculous about Mr. Gridley and Mrs. Wright staying in the same hotel; that she never thought of staying at the same hotel the (7) did, that she would walk the streets all night before she would do that unless the (7) wife was along.

(1) said she thought some of our witnesses were ridiculed, but (2) said she thought the (6) very fair and broadminded.

Deponent asked (2) about the burning of the manuscript, and she said "Well the (6) asked them all to stand up and he

took their names, and said that they would all have to go before the Grand Jury, and would hear more about it later; she said that even if it is a year and a half from now the Government will get them; look at Sinclair he's a millionaire, but they got him.

Deponent and her friend (1a) told (2) that they were not satisfied, and she said she hoped we would not throw any more good money after poor.

We thanked (2) for her kindly consideration, and she told us she would be willing at any time to talk to any of the members in regard to the matter, and that she would explain fully about it.

As we were leaving (2) followed us out of the house and to the automobile, and she asked us if we knew where the (7) were. We told her we did not know but thought they were still in (3).

(2) then asked if we had had any Billboards lately that she would like to have one if we could get it for her, but we told her that we had not received a Billboard since the trial.

Further deponent sayeth not.

(1b)

.....

Subscribed and sworn to before me this 15th day of June, 1929.

(9)

.....

Notary Public, Lansing, Ingham Co., Michigan.
My commission expires Jan. 2, 1932.

This juror states that she convicted for these reasons:

First: Neither would go on the stand.

Second: The manuscript was not brought into court as evidence.

Third: He was a disbarred lawyer.

Fourth: He never signed his name to anything.

Fifth: Their living conditions.

In regard to the first—neither would go on the stand—the constitution of the United States says that no man shall be a witness against himself, and there is no presumption of guilt to be derived from the fact that a defendant does not take the stand. It cannot be used against him.

It does not relieve the government from proving the guilt of the defendant, and here we have the wife of a college professor, who tells us that she has been brought up in the atmosphere of the law, and has not learned at her age (about 45) of the constitutional provisions in this regard. Her very admission proves her incompetency, and total disregard of her duty. Was this a violation of her oath as juror?

Why should the defendant take the stand when his attorneys advised him that they had not made a case against him?

Second—the manuscript was not brought into court. Here again the same constitutional protection is thrown around a defendant, which says there is no presumption of guilt, because the defendant does not take the witness stand and produce any paper or record; and the courts have reversed decisions where demands have been made by the court or the prosecuting attorney for such papers.

Just think of it! Here's a juror brought up, as she says, in the atmosphere of the law.

Third—that I was a disbarred lawyer. This question I will not discuss for the reason that the matter is before the appellate court.

Fourth: He never signed his name to anything.

These people took me on my own terms, and one of those terms was that I would not correspond with anyone. The testimony of Mr. Thomas Grover covered this point fully. Did she hear it? Some of the witnesses testified that they had received personal notes from me which were signed. Others testified that it was understood that I was not to correspond; that the secretary of the organization attended to that part of the work.

Fifth: Their living conditions.

Ye gods! Deliver me! You cannot live in the same hotel or apartment without an implication of immorality! How about living in the same city? How about living in the same state? How about traveling in the same Pullman. Does this lady demand when she is traveling in a Pullman to be locked up, because the masculine gender may be occupying a neighboring berth, or does she demand that the railroad company furnish her a chaperon to guide her virtuous slumbers through the night? What a standard of morals! Is this an honorable excuse for convicting two people? Was there a scintilla of proof offered upon this trial questioning my good name and character? Where did she get these ideas? With whom was she talking? Who told her that Watkins was wild to get me on the stand so as to punish me under the Mann act?

Did this juror run to the judge to tell him who was filling her full of false, malicious, unscrupulous lies in order to inflame the minds of the jurors to get a conviction here, for the affidavit states

"Deponent asked upon what they based their verdict, and she said five things, counting off on her fingers."

Reader, nowhere throughout the trial of this matter was the character of the defendants discussed in any manner. This person saw hundreds of people daily greeting these two defendants in love and respect. She must have known that these people had daily contact with them, and she has made an excuse here for having adjudged this man and woman guilty as charged, and for her instrumentality in having the five and four year sentences imposed, on somethings of which she could not have the slightest knowledge, for she does not know the defendants, nor anything about them personally.

These two defendants have been living for three straight years here in Michigan, among the fifteen hundred members of this organization; they come and go, night and day.

Who gave this woman this information to use so unwisely?

"What is slander?"

"A verdict of guilt pronounced in the absence of the accused, without defense or appeal, by an interested and prejudiced judge."

Mark well that this person was serving on a jury. It seems to me that with such a mind the light and sunlight of God were pitifully inadequate to penetrate; hence the unchristianlike statement of something of which this woman could have had no knowledge unless it was slander imparted to her for a purpose, which purpose was fulfilled.

Note this statement in the affidavit "That every leader put on the stand had destroyed their books by burning them." Think of it! The Government witness Lutz is the only witness who testified to a fire, and this juror makes the statement that every leader so testified.

Now the affidavit states "That if Mr. Gridley was on the square he would not have had his mail come to a post office box instead of to his place of business." Lansing, you ought to be proud of this citizen. Take her down to your post office and show her a few of your boxes that you are

renting out to different business firms, probably the largest commercial institutions in your city, who will not trust their mail to be thrust through a knothole in the door. This is evidence of guilt.

The affidavit further says, "Mrs. Reuling stated that nothing was proved to show that Mr. Gridley had any rare or unusual books, nothing but what could be found in any reference library; that the only things he had bought from these booksellers were things that could be readily turned into cash; that he seemed to have bought them for his own convenience so that he would not have to run around and look up the facts pertaining to his book; then she added that she did not believe that he had even the scratch of a pen for the book."

So she concedes that there were books bought for my convenience to publish a book.

Anything unlawful in that? Lawyers, take this lady's advice, all law books can be obtained in a public library, and you who have been brought up in a legal atmosphere, take your office over to the public library and transact your business.

Reader, will you believe that this juror has no books in her house; that she goes to a public library every time she has occasion to investigate a question or seek information? This lady's husband is a professor in one of the Michigan colleges. Do you suppose he buys any books for reference purposes; do you suppose his students buy books? What do you think of this for an excuse of convicting a man and woman and condemning them to five and four years' servitude in a penitentiary?

On what information did she base her statement that I have no books but what can be found in a public library. She heard the depositions read, and with the slightest conception of what the questions are in this history, she would know that many of these books had long since been off the market, and that it is only when some old family passes out and their library is disposed of that you can obtain them.

The fact is, I have one book, that the man who sold it to me said that if he had to get another he couldn't get it for a million dollars; and this a man who has spent his life among books and is acknowledged to be an expert in book lore.

This lady paid a lot of attention to those depositions. She gave me a lot of consideration for the fact that I was doing this work without any compensation; meeting my own expense when in New York. Oh, I'm a criminal because I did not stand around the public library. Justice! Ye gods! What crimes are committed in thy name!

TESTIMONY

Naturally the first witness the government would use would be the one with the best ability to put over this ridiculous proposition, bearing in mind what that proposition is as outlined in Mr. Watkins' opening statement, "We will show you that the defendants organized these people; that they told them they were in possession of information and records, which could and would recover for them this New York property. In a nutshell that is the substance of Watkins' promise, and the question is did he deliver.

Here is a man who states that I was "employed" to prepare a case for court. He therein and thereby acknowledges the falsity of Watkins averment "could and would" recover. This false testimony of Roat's can be used for the very purpose of proving that the indictment is false, for Roat himself states it was to prepare a case for court, then along with that he knew that no one could say what the courts would do with the material.

Again "we will show you that the defendants organized these people into societies." Roat's testimony states that he attended this meeting in December, before he knew me, and instituted business systems with them getting them on a business basis. Therefore the defendants were not present when the organizing was being done in Wilkes-Barre, and it must be acknowledged that they were no where near, nor even making suggestions, and that the man Roat was the general. Therefore, if any promises were made to the members of that organization to join, they could not have been promises made by the defendants, they were not there, as the testimony of Roat will show; he did not know them, as his testimony shows; and he instituted the business system for that organization, as his testimony shows.

Hence, following out the testimony of this first government witness, upon which reliance is placed to prove that the defendants deceived and defrauded even as long ago as the early part of 1923 these Wilkes-Barre members of Roat's organization, you will observe that I was not present at this meeting; that he testifies he did not meet me until the Spring of 1923—April in fact. Then he is absolutely concluded by the testimony of the party who made the arrangements, for he acknowledges that I was employed from January, 1923. He produces no letters during the interim from January, 1923, to the time when he met me, to prove the truth of his statements. And his testimony states that he was not present when those arrangements were made.

If anyone told Roat that I was employed to prepare a case for court, it was the man who made the arrangements with me. He has testified under oath that I only promised to put the results of my investigation in book form for public sale.

So no matter what Roat believed, I am absolved from any charge of fraud in this regard, for nothing was produced by him to prove his charges of employment to prepare a case for court, on the contrary, he acknowledged ignorance of the arrangements.

His testimony is therefore false.

In furtherance of proof that Roat knew that my proposition was simply publication, here is a letter on the following pages which he wrote to me just one month after he met me. (Plates Fifty-four, Fifty-four-A, Fifty-four-B.)

In reading the following pages, Roat's testimony, upon the trial, I want to impress again on my readers the charge; that I organized these people; that I falsely represented to them that I had in my possession proofs upon which they could and would recover this New York property; that I changed the scheme in the different localities; that I caused dissention:

The month of August brought a call from Roat to attend a meeting in Pennsylvania. I had been objecting for some time to the fact that they were not furnishing enough funds to secure the materials I needed for the book; that it was no use them sending me the overhead if I could not push ahead. The result was I was asked to go to Pennsylvania. I had learned that there were no statements rendered to these people of the amount of money received; that promises of suit were being made, impossible of fulfillment, with which promises I would not have my name connected. This resulted in the first friction between this National and myself.

In September I was notified that there would be some meetings in Michigan which I was requested to attend.

Plate Fifty-four

A. J. ROAT SUPPLY CO.
JOBBERS OF
HARDWARE AND SUPPLIES
KINGSTON, PA.

May 27-23

Dear Sir! Have been for two days trying to get your letters answered, owing to the overwhelming lot of business which has required personal attention, someone had to be neglected, not only someone, but several ones. Mr G. has dismounted from his high horse, and has again gotten both feet on the ground, after trying to sow discontent, and to call a meeting of some nearby heirs, who have been outlaws always, he suddenly realized he had made a mistake, as several who responded to his invitation to call, plainly told him he was making a mistake, the meeting he had scheduled was a failure as no one came, hence his sudden change towards us. As this is over, in fact it never worried me a little, however if G. behaves himself would just as soon he would do any legal work when wanted.

My office telephone No is Kingston 8870 Bell Phone
" Residence " " " " 7256J " "
our asso " " " Wilkes-Barre 895J " "
My P.O. address Box 55 Kingston Pa
our " " " 442 Wilkes-Barre. Pa
our Office is Room 1218 Miners Bank Bldg.

I hope to be over on the 30th for Washington D.C. will not be back until Sunday June 3rd am taking my family for a short vacation.

Plate Fifty-four-A

A. J. ROAT SUPPLY CO.
JOBBERS OF
HARDWARE AND SUPPLIES
KINGSTON, PA.

Neglected getting certified check, am mailing same in blank for your convenience. By June 4th our office will be in full operation am getting mailing files, and list of names of every member who has paid or contributed towards the cause, in fact we hope to have our office somewhat systemalized which we think will result in having all members satisfied by keeping in closer touch than here to fore.

Am beginning to realize the magnitude of our undertaking, had I ever imagined what a task it would be would never have consented to go long. The die is cast, and cant turn back, am going to see it through.

Concerning the printing cannot give any thing definate yet am giving it my attention and suggest you get prices there also, as believe it would be better if it were done where you could give same your personal attention, however this can be decided later, would give fifty dollars out of my own pocket if they were ready for disposal now, as I know they will go a long way to satisfy our members. Please bear in mind, that I may be a little late in writing some times, not through choice I assure you simply because I am over worked will endeavor to be punctual as I know you expect it. Over

Plate Fifty-four-B

Upon my return intend writing several California hire suggesting they hold a state convention, if they give this meeting a good deal of news paper publicity believe it will increase their membership 100%. How did Mr Wingate impress you? If you think him with us, can have him go to Calif in our behalf, as he so expressed himself when here, while I think he is very much interested, and believe he is for us would like your opinion before planning on the Calif campaign.

Will keep in touch with Jones while away in case anything occurs that he does not want to decide on.

Hopes hoping everything is running smoothly, and that we will have the reports as promised.

Yours &c
G.M.R.

Plate Fifty-five

Resignation

E. 28 Ro
Adelphi
Bro.

TO THE NATIONAL HEADQUARTERS OF THE ORDER
OF THE ADVOCATES OF JUSTICE FOR THE RES-
CENDANTS OF ANNEKE JANS BOGARDUS:

Gentlemen:

After due deliberation it has become evident to me that I must announce the severance of my relations with your Order, finally and unalterably.

After having made certain statements to me as an inducing cause to connect myself again with your work, i. e., that you had been striving for months to get an attorney to take up this work for you, but unsuccessfully; using my old friend's name as another inducement; that you had some 3,000 heirs back of this movement, you obtained my consent. Almost immediately I found your statement false as to the number of subscribers you had back of this work, and it was then that I laid out the plan for the publication of the records in book form, which you heartily approved and endorsed, and heralded from one end of the country to the other; realizing this plan would give you two most essential thing public opinion, and the needed finances to carry on your work. There is no question but what you tried to discard this plan for one of your own making, without any previous consultation or notice to me, and to this selfmade plan of yours I cannot be a party. The evidence of your intentions is overwhelming, for your president's letters establish it beyond any question whatsoever.

I have told you, and I now reiterate it, I cannot be a party to the bringing of a premature suit; for I hold the opinion that there is no one man in the United States today who, without public opinion back of him, could get any consideration in this matter; it is my candid opinion that any such move would retard your work for at least five years, if it did not kill it forall time.

It has also become apparent to me, though at the outset of our relations it was no concern of mine, as it was then understood my name would not be used publicly or in correspondence by you, that your National headquarters is opposed to my insistence of the issuance of itemized monthly statements, to be furnished to the contributors of the funds for the promulgation of this work, in order that each contributor may see that their money is being used for the purposes for which it is intended. I hold that I did not go out of my province in making this demand, because I found that you were using my name to raise funds. I am frank to say that I became more insistent when I was informed that ~~your president~~ made the following remark to one of the heirs:- "not to let an attorney know how much money you have in the treasury lest he find away to spend it" -- for that certainly showed a degree of skepticism so far as I was concerned, and your president should have understood that the money was being furnished for no other reason than the furtherance of this work - not for a sinking fund.

I have helped you in every conceivable way - drew up your constitution and by-laws for you at the request of your president, and after you had been organized several months and running without such requisite articles; have helped you with your correspondence; have made trips for you, etc.

You have been given ample opportunity to mend your ways since my first resignation of September 20th, which I reconsidered at the behest of your President - Mr. Jones and Mr. Tefft, and have but asked the renewal of your pledge to the carrying out of the plans evolved by me, and to which you then gave your hearty support, and which was thought of so highly by you, and the election of a new treasurer. I have received no acknowledgment of these requests, although they were asked for by your Secretary. Therefore, I now feel, that self-preservation is the first law of nature, and that in view of your President's letters it is my bounden duty to broadcast my resignation to the interested parties lest the wrong impression be gathered from your presidents letters.

Having lost confidence in the purposes and intentions of your National Officers I refuse to allow you to use my name further ~~by you~~

Very truly yours, W.T.Gridley.

Post Office Box 71,
Times Square Station,
New York City.

That I was to hold myself in readiness to leave about the fifth or sixth.

Upon arrival, I found that the object in bringing me to Michigan, was to interview Mr. Alfred Lucking, for the purpose of giving him the necessary information upon which to bring a suit. I told those who were prepared to accompany me to the interview that I did not want to see Mr. Lucking; that attorneys were not a part of my plan. However, I allowed them to persuade me to go to the interview in order, as they said, to interest Mr. Lucking in the project. The project to me was simply the publication of this book, and naturally when Mr. Lucking approached me with the statement that if I could advise him how to get around adverse possession, he would go right down to New York and bring a suit, I said that suit was no part of my plan; that I was merely publishing the results of my connection with, and investigation of this matter. I did not know whether Mr. Lucking knew of the arrangements with me or not; so I told him plainly that I was not interested in a suit; that there must be some mistake; I was simply publishing a book, and that my only hope of reward was from the sale of that book; that I was receiving no compensation for my work; in fact had refused compensation; that these people only paid the expenses, the overhead. Mr. Lucking apologized for the misunderstanding. He did, however, speak intolerantly of the plan, and in very plain language told these people they should not spend any money on it. This was perhaps natural, he being a lawyer, and again it is probable that this feeling was engendered by some conversation he had with others when I was not present giving him the misconception of my plans. At any rate he did not talk as if these people had come after me, but rather as if I had sought them.

After leaving Mr. Lucking I became so disgusted with the general deceptive conditions that I announced to Dr. Brown and Tefft, who had been present at the interview, that I was going back to New York and sever my connection with the whole matter. I did not like the deception practiced on me about this interview. However, I found that the letter which I had thrust into my pocket told me that interviews had been arranged, but for what purpose, it was not stated.

Alfred R. Lucking, after that interview, wrote a letter to one of the members, which letter was turned over to me, which precludes Alfred R. Lucking making any statement that I contemplated a lawsuit, and gives absolute proof that he knew I was simply contemplating publishing a book.

After this visit my mind was made up to sever all connections with the National, and I wrote a letter of resignation (see plate fifty-five).

On the heels of this resignation I received a call from Roat, Tefft, and Jones, September 28th, 1923, and their visit was for the purpose of asking me to reconsider that resignation (any testimony to the contrary notwithstanding), for if it was as Roat states, to take me to task, or to insist upon seeing what work I was doing, or finding fault with the progress, how can he explain this telegram:

New York, New York, September 28th, 23.

Hannah G. Lutz,
343 Fountain Street,
Philadelphia, Pa.

At conference here, everything satisfactory, do not mention my letter to you.

G. M. Roat,
4:25 P. M.

Hence his testimony is false, for his telegram says everything satisfactory.

MR. WATKINS: Mr. Roat, will you take the stand? [67]

GEORGE MURRAY ROAT was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WATKINS:

Q. Mr. Roat, your home is where?

A. Kingston, Pennsylvania.

Q. And with respect to Wilkes-Barre, where is Kingston?

A. It is a suburb of Wilkes-Barre.

Q. You have lived in Kingston how long?

A. Sixty-five years.

Q. Born there?

A. Yes, sir.

Q. And you were in business in Kingston or Wilkes-Barre?

A. Kingston.

Q. And in what business were you?

A. Hardware business.

Q. And how long were you in the hardware business in Wilkes-Barre?

A. Kingston.

Q. In Kingston?

A. Forty-five years.

Q. Are you still in that business?

A. We sold out as of January 1st, 1924.

Q. And since that time you have been retired?

A. Yes, sir.

Q. Mr. Roat, did you ever know the defendant, Willis T. Gridley?

A. I did know him.

Q. And when did you first meet the defendant, [68] Willis T. Gridley?

A. The early part of 1923.

Q. Well, the first time you met him, was it in New York City or was it in Kingston?

A. I think it was in Kingston.

Q. You don't remember exactly the first meeting you had with him?

A. I think it was somewhere about April of 1923.

Q. And you do not remember whether it was in Wilkes-Barre or New York?

A. I think it was in our store at Kingston.

Q. You were a member of such a society? [69]

A. Yes. Of the National.

Q. Now by the "National" what do you mean?

A. Well, perhaps I could explain it better in my own terms. Around about Wilkes-Barre there were several societies who claimed to be heirs of the Anneke Jans Bogardus estate, and they had several meetings, and on account of me having an aunt who was supposed to be a direct descendant I was asked.

MR. McARTHUR: If your Honor please, I object to "On account of." It can't be anything relating to this whatever, and encumbers the record.

THE COURT. Over-ruled.

MR. McARTHUR: Note an exception, please.

MR. WATKINS: Go ahead.

A. And on account of my aunt, I attended a couple of the meetings, and from their method of procedure, I felt that they were not organized along strict business lines and made some suggestions.

MR. McARTHUR: If your Honor please, I desire to make

the same objection. It is not evidence. It is irrelevent and incompetent.

THE COURT: It is, but I will let it stand.

MR. McARTHUR: Note an exception.

THE COURT: A person not versed in law will drop some of those things in telling his story. You may go ahead.

A. I made suggestions as to business forms of conducting their affairs and suggested an association meeting should be held to get the different individuals or [70] smaller societies together under one head, which was done, and a national meeting was called in December of 1922 in the Y. M. C. A. Building at Wilkes-Barre, Pa.

Q. Did you attend that meeting?

A. Yes, sir.

Q. You say that meeting was in December, 1922?

A. Yes, sir.

Q. I will ask you whether or not Mr. Gridley was in attendance at that meeting?

A. No, sir.

THE COURT: That was before you had met Gridley do I understand? This was before you had met Gridley?

A. Yes, sir.

Q. (By Mr. Watkins). At that time you did not know Mr. Gridley at all?

A. No, sir.

Q. Had you ever heard of him?

A. Not as Gridley.

Q. You had heard of him under some other name?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir.

And under what name had you heard of him at that time?

A. Anderson.

MR. CHOLETTE: Just a minute, I would like to object to that, your Honor, as it is clearly hearsay evidence. [71]

THE COURT: I will admit it.

MR. CHOLETTE: Note an exception please.

Q. (By Mr. Watkins). In December of 1922 did you have this meeting and formed a national organization?

A. Yes, sir.

Q. And as I understand your testimony, you personally claim no direct descendency from Anneke Jans Bogardus?

A. Yes, sir. I have no connection whatever.

Q. So that your entire interest in the matter, at that time, as you have testified, came through your aunt?

A. Yes, sir.

Q. In connection with this meeting in December, 1922, and the national organization, was an organization at that time formulated?

A. Yes, sir.

Q. And I will ask you whether or not the officers of that organization were elected at that time?

A. Yes, sir.

Q. And do you know of your own recollection, remember who those officers were?

A. Robert Jones was secretary, and I think I was elected Vice President and Treasurer.

Q. And do you know who was elected President?

A. I have forgotten that.

Q. Now you say that Robert Jones was elected Secretary. Was he a resident in and about Wilkes- [72] Barre?

A. Of Wilkes-Barre.

Q. And you recollect that he was elected Secretary and you were elected Vice President and Treasurer?

A. Yes, sir.

Q. Now, approximately how many people were in attendance at that meeting?

A. Well, I should judge there was at least three hundred, if not more, people there.

Q. Now, you say that some time subsequent to that meeting you did meet Mr. Willis T. Gridley, the defendant in this case?

A. Yes, sir.

Q. (By Mr. Watkins). You say that some time subsequent to the December meeting, 1922, you did become acquainted with Mr. Gridley? That is right, isn't is?

A. Yes, sir.

Q. Now what were the circumstances under which you met him?

A. As our hired lawyer to prepare this case for court.

Q. In other words, Gridley was employed by this National society to prepare the claim of these heirs, members of the national society, to represent them in [73] presenting their claim is that right?

MR. CHOLETTE: Now, your Honor, we want to object to that and ask that the former answer be stricken as clearly hearsay, unless he heard the conversation or was present when such arrangement was entered into. It would be hearsay. I think it is entirely improper and should not be admitted.

MR. DUNHAM: And this question calls for a conclusion. The second objection would be that the records themselves of whatever arrangement was made would be the proper evidence.

THE COURT: Overruled.

MR. CHOLETTE: I take an exception.

Q. (By Mr. Watkins.) I will ask you this, Mr. Roat, as I understand it, you were the treasurer of this organization?

A. Yes, sir.

Q. Did you, at any time, ever pay Gridley any salary for working for the National organization?

A. $500.00.

MR. CHOLETTE: Exception. [74]

Q. (By Mr. Watkins.) You say that you have paid him as an employee of the National organization. You mean as the treasurer of that organization you have paid him as an employee of the organization?

A. Yes, sir.

Q. And at what rate did you make payments to him?

A. $500.00 per month.

Q. Now, in connection with those monthly payments of $500 a month, did you have at any time any conversation with the defendant Gridley as to why you were paying him $500 a month?

A. Yes, sir.

Q. Where did you have any such conversation with him?

A. In his . . . . in New York City.

Q. (By Mr. Watkins.) You remember the first [75] time that you went to Gridley's office in New York? Do your remember whether you went alone or with someone?

A. I never went alone.

Q. Do you remember now the first time that you ever went to that office?

A. I can't give the exact date.

Q. Well, do you remember who accompanied you [76] the first time you went?

A. I think Mr. Jones was along.

Q. And by Mr. Jones, you refer to Mr. Robert Jones of Wilkes-Barre?

A. Yes, sir.

Q. Can you remember now whether that was the first time you had ever seen Mr. Gridley or not?

A. I think Mr. Gridley was up to Wilkes-Barre once before that.

Q. And do you think that, at the time of his prior visit to Wilkes-Barre, that you had met him?

A. No, I had never met him before his first visit to Wilkes-Barre.

Q. Now, but when he did come to Wilkes-Barre, you met him prior to the time that you ever went to his office in New York?

A. That is my recollection.

Q. So that you think now that the first time you ever met him was in Wilkes-Barre?

A. I think so.

Q. Now under what circumstances did you happen to meet him in Wilkes-Barre?

A. It was to perfect our method of procedure.

Q. Well, did you have a meeting there or what?

A. Yes, sir.

Q. And what kind of meeting was it?

A. It was a meeting of the officials of the National Association.

Q. And Gridley was in attendance?

A. Yes, sir.

Q. Now, do you know of your own knowledge how [77] the defendant Gridley happened to attend that meeting?

A. Upon invitation.

Q. Do you remember any conversation had after that meeting in which Gridley was in attendance in Wilkes-Barre?

A. Only pertaining to the case, the length of time required, and the result obtained—to be obtained.

Q. So that there was conversation at that meeting of the officers of the National organization?

A. Yes, sir.

Q. At which Mr. Gridley was in attendance, relative to the prosecution of a case?

A. Yes, sir.

Q. And what was the prosecution? The prosecution of what case?

A. Of the heirs of Anneke Jans Bogardus against the Trinity Church Corporation.

Q. And I will ask you whether or not that was with respect to the property owned by the Trinity Church Corporation in New York City?

A. Yes, sir.

Q. So that at this meeting in Wilkes-Barre of the officers of the National Association at which Gridley was in attendance, you did have there definite conversation relative to a lawsuit to establish the interests of their heirs?

A. Yes, sir.

MR. McARTHUR: If your Honor please, I think I ought to interpose an objection here. This line of examination so far is practically the testimony of the District [78] Attorney. He is suggesting everything that is being said. It is either yes sir or no sir. It seems to me this man is sufficiently intelligent to tell what occurred, what was said, and what was done without suggesting in this broad way, as broad as it is possible, to make him give the answer that is desired.

THE COURT: I think he made it preliminary. State the conversation.

MR. McARTHUR: He has not yet asked what the conversation was in his entire examination.

MR. WATKINS: I will clear it up, your honor.

Q. (By Mr. Watkins.) What, if anything, Mr. Roat, did you hear Gridley say, relative to such a case?

A. About all that I memorized, that was essential to the case, was the method of procedure and the time required to prepare the documents to present the case to the courts of New York.

THE COURT: What was it he said on that subject, as near as you can remember?

A. If we would provide sufficient money, he would guarantee to have the case then prepared inside of six months so that any attorney could present it to the Courts of New York.

Q. (By Mr. Watkins.) Now in that connection, you say if the right amount of money, a sufficient amount was supplied, this could be done. **Did he state what that amount should be?**

A. I think that it was somewhere in the neighborhood of $10,000.

A JUROR: Your Honor, there is so much noise out here that it is bothering some of us to get what is coming from the stand here. [79]

THE COURT: Put out the noise.

Q. (By Mr. Watkins.) At any rate, Mr. Roat, you are sure that a sum of money was designated as the necessary amount for this work?

A. Yes, sir.

Q. And are you certain that Mr. Gridley did set such an amount?

A. That is my recollection.

Q. Well, I mean are you certain that he set some amount?

A. Yes.

Q. You are sure of that?

A. Yes, sir.

Q. And as you remember it, it was $10,000?

A. Yes.

Q. Well, having had that conversation, was any agreement entered into by the members of this national organization with Mr. Gridley in connection with the matter?

A. I can only report that as a report of the committee that went to New York to see him and arrange.

Q. He had come down to Wilkes-Barre, hadn't he?

A. Yes.

Q. And met with this board?

A. Yes.

Q. And he had this conversation that you have related?

A. Yes.

Q. Well now, did the organization at that time enter into an agreement with him in that connection? [80]

A. I believe the committee went to New York before he came there.

Q. In other words, it is your recollection that at some prior time there had been some agreement made?

A. Yes, sir.

Q. And you were not in attendance when that agreement was made?

A. The agreement was made originally in New York City by a committee who reported back to us.

Q. So that, as to that agreement, you, of your own personal knowledge do not know?

A. Only as to the amount of the checks I made out monthly.

Q. And did you meet him in New York once or more than once?

Q. And did you meet him in New York once or [81] more than once?

Q. And what was the reason for your meeting him in New York, if any?

A. The first meeting was to get information to give to the heirs on account of the impossibility of seeing anything that had been accomplished. On my trip to New York to get some evidence of the progress of the case we were never able to do so. We always had to go to this loft, I guess it was, in the 30th Street, down in New York, and could never get any evidence of the progress of the case.

Q. Do you remember of your own knowledge the [82] amount of payments that you made, any regular payments that you made?

A. I made the regular payments every month of $500.00 and was called upon to send him checks, a check for a typewriter, which he claimed the old one was so noisy that it interfered or annoyed the tenants under him. I sent him checks for materials, and I sent him a check for a drawing account so that it would not delay the work by asking for money for every little expense, or practically an expense account.

Q. Now, Mr. Roat, with respect to these moneys, did you have an actual conversation with the defendant Gridley as to why you were paying him these moneys?

A. Yes, sir.

Q. And what were those conversations that you had in that connections?

A. The conversations were pertaining to the delay [83] in perfecting the case which he was to prepare, and we wanted to see some evidence of it.

Q. You were making payments to this man, weren't you, Mr. Roat?

A. Yes, sir.

Q. Did you have any conversations with either Gridley or Mrs. Wright, or both of them, as to why you were making these payments?

A. Yes, sir.

Q. What was your conversation with them?

A. We were paying him to prepare the case so that it could be presented to the Court of New York, and we could get no satisfaction, no information as to the time when it would be completed, which was causing dissatisfaction amongst a lot of the societies. We could give them no information as to our progress.

Q. Now, in a general way, approximately how many members were there to this national society?

A. Well, all of the different societies, there were several societies in Michigan, we had one in Washington, and there was one in California, although I think Michigan had a State organization which controlled the individual societies. They turned their money over as a whole.

Q. Well, approximately, how many members, in round numbers, did you have? 50 or 1,000 or 5,000, or how many?

A. Oh, there must have been a thousand or more.

Q. And this was during this period between December, 1922 and October, 1923? [84]

A. Yes, sir.

Q. When, if you can remember, was the last time that you had any conversation with either Mr. Gridley or Mrs. Wright, or both of them, in connection with that particular matter? [85]

A. **September, 1923.**

Q. And where was that conversation?

A. In New York City.

Q. And was that likewise in the office of Mr. Gridley?

A. Yes, sir.

Q. Do you remember the nature of that conversation?

A. Yes, sir.

Q. What was it?

A. My objection to his—

THE COURT: I think I will limit it to the conversation. State the conversation now just as fully as you can. If you cannot state the exact words, state the substance, but you should state the substance of what you said and what he said.

A. **I went to New York. I telegraphed to Mr. Tefft of Jackson, Michigan, and went to New York to interview Mr. Gridley concerning the case, and especially about the issuance of this book, which was altogether contrary to our first and previous arrangement.**

THE COURT: State the conversation now that you had, or that you can remember, every they that you said, and anybody else has said?

A. Well, it is too long for me to remember the words of the conversation. We went down to talk about perfecting the case for the lawsuit first.

THE COURT: And what did you talk about, that is what they are asking about? [86]

A. **It was about the case, and our doubts as to the advisability of printing the book.**

THE COURT: What was said, as near as you can remember? What did they say when you asked them about it?

A. Well, they thought—they said—Mr. Gridley said that it would have such an effect, **the printing of the book would have such an effect on the public that it would force the Trinity Corporation to come to some settlement.**

Q. (By Mr. Watkins.) When you say "Come to some settlement," do you mean settlement of this lawsuit?

A. **Yes, sir, public opinion would be so great against them.**

Q. Did you have any other conversation than that?

A. Only in a general way. **I objected to the printing of the book until the case had been presented to Court and tried.**

Q. **Did you express that then to Mr. Gridley?**

A. **Yes, sir, always.**

Q. What did he say about it?

A. **Well, he felt that the publishing of the book would be the better way, but you know six months had already expired and the suit had not been completed and the heirs were clamoring for information, and I lost confidence in the case and resigned.**

THE COURT: Did he tell you whether he started any lawsuit?

87

Q. Did you ever at any time find out what use was made of the money that you personally sent to Mr. [88] Gridley on behalf of this organization?

A. No, I never received—excepting the $125.00 for a typewriter, I think that was the amount, a noiseless typewriter, and some money was sent for stationery, and I think the check book will show I think there was $500.00 spent for petty cash.

THE COURT: Just read the question. I do not think you understood it.

(The last question was read by the reporter.)

A. I never knew otherwise than the $500.00 we sent him for salary.

THE COURT: But he wants to know if you ever found out what he did with the money.

A. Never, no sir.

THE COURT: Did you find out whether he bought the typewriter?

A. No sir, never permitted to see his place. I never saw it, never permitted to see any of it.

Q. (By Mr. Watkins.) And although you requested it on various occasions, you never saw any evidence of material being accumulated for the purpose of the trial of the lawsuit?

A. No, sir, never permitted to see it.

Q. Mr. Roat, you have said that your final interview with Mr. Gridley was one in which your conversation was relative to getting this suit actually started, and [89] Gridley's conversation was the opposite of that; that it was essential to have a book published first. **Do you know who suggested the publication of this book for the first time? Where did you first hear of it?**

Q. As a matter of fact, that is quite true of most to have a book published first. **Do you know who suggested the publication of this book for the first time? Where did you first hear of it?**

A. **Mr. Gridley.**

Q. **Where was that, in your conversations with him in his office?**

A. **Yes, sir.**

Q. Did you at any time have any conversation with either Mr. Gridley or Mrs. Wright relative to [91] your leading the organization?

A. I do not think that I did. On my visit to New York City in September—

MR. McARTHUR: I desire to object to that. He has answered the question.

THE COURT: Overruled.

MR. McARTHUR: I take an exception.

THE COURT: I will let you state what occurred there in New York.

A. **In September I went to New York in company with Mr. Teft, and Mr. Jones to ascertain why Mr. Gridley had not prepared the case that he was intended to, to produce to the courts of New York; and becoming discouraged with the method of procedure, and learning of the book that he proposed to issue, I lost all confidence in the case and withdrew.**

EXAMINATION

By Mr. Watkins:

Q. Mr. Roat, you say that you did know at the time you first became acquainted with Mr. Gridley that he was a disbarred attorney?

A. Yes, sir.

Q. And you say you learned that from talking to Mr. Gridley?

A. Yes, sir.

Q. Now, you have testified that from your con- [126] versation with Mr. Gridley your understanding was that he was to prosecute a lawsuit for you?

A. He was to prepare documents for the prosecution of a law suit, as he claimed to have all legal data and evidence from his connection with the case from previous years.

MR. WATKINS: Have you got Exhibits 2 and 3?

Q. Now, in this exhibit 3, which was the letter, form letter sent out by the headquarters of the National Committee. The object of the letter was to secure funds, wasn't it?

A. Yes, sir.

Q. So that at the time that letter was sent out the object of the organization was just as stated in the letter?

A. Yes, sir.

127-128

Q. (By Mr. Watkins): Now, Mr. Roat, referring to exhibit 2 which you read into the record, you read, "Our New York man is the only logical man in the [129] United States who is thoroughly familiar with the case as we are informed he worked several years before the other Association." To whom do you refer in this letter when you say "our New York man."

A. Willis T. Gridley.

Q. You also say that "our Mr. Gruber had not fallen down when the Association sent him to Albany at an expense of $250.00 to get the above named copies and maps that Mr. Jones procured in one week's title, we would have been farther advanced with our case." Upon what did you base—upon what information did you base [130] that statement?

A. The trip to New York was upon request of Mr. Gridley to get certain information from the capital pertaining to the prosecution of our case.

Q. And by the capital you mean the capital of the state of New York, in Albany?

A. Yes, sir.

Q. And what made you reach the conclusion that Mr. Gruber had fallen down in getting that information?

A. He did not get what he was sent after, and immediately sent Mr. Jones, our secretary, and he brought back the required—the data that Mr. Gridley had written for.

Q. Now, Mr. Gruber was, as you have testified, a practicing attorney in Wilkes-Barre?

A. Yes, sir.

Q. And you say Mr. Gruber being an attorney and an heir also, very enthusiastic in the case was hired to transact our legal affairs with our New York Attorneys. To whom do you refer when you say our New York Attorney?

A. Willis T. Gridley.

Q. You also state "You must realize that the association must do the fighting in order to start legal proceedings" to what legal proceedings do you refer in this letter?

A. The legal proceedings that Mr. Gridley was [131] to prepare to present to the courts of New York.

Q. (By Mr. Watkins): So that as a matter of fact the information that you set up in this letter in [132] that regard was secured by you from your conversation as with Mr. Gridley?

A. Yes.

Q. And is that true likewise with respect to the fact that Mr. Gruver had fallen down on the job in Albany?

A. He had failed to procure the evidence that Mr. Gridley wished.

Q. Did Mr. Gridley tell you that?

A. Well, he did not get it. He did not get the evidence. Then I sent Mr. Jones back, and he got it.

Q. How do you know he did not get the evidence?

A. Because he came back with out it.

Q. Come back to Wilkes-Barre?

A. Yes. I immediately sent Mr. Jones back, and he got it, and I think, I am not sure, but I think he forwarded it from Albany although I am not positive on that matter.

Q. You have also stated in this letter, Mr. Roat, as follows, "Will you kindly forward any money that you may have as our expenses since you were here have been extremely heavy, as you will note by the expenditure for the books as listed below: One lot $325, one lot $417, one lot $127.50." That $325 was $325. I will ask you what you mean by the words "expenditure for the books as listed below"? What books do you refer to?

A. Mr. Gridley wanted to get some certain books that

were very valuable pertaining to this case, preparing it for court.

Q. So that the books to which you referred in this letter were not at all the books that subsequently were referred to in this case relative to telling the history of this thing? [133]

A. Had no bearing on it whatever.

CROSS EXAMINATION [92]

By MR. McARTHUR:

Q. Mr. Roat, you say you live at Kingston?

A. Yes, sir.

Q. When did you first become acquainted with this Society that you have spoken of that you belong to?

A. Which do you mean, the National Society?

Q. Did you belong to two societies?

A. No; I attended some of the local meetings prior to the formation of the National.

Q. Then the Society of which you were a member, when did you first become acquainted with it?

A. In December or November. December is when we held the National meeting.

Q. December or November of what year?

A. 1922.

Q. 1922?

A. Yes, sir. [93]

Q. That is the first you knew anything about it?

A. As I said before, just shortly before the National meeting is when I first knew anything about it.

Q. Well, now, then, how did you first become acquainted with it?

A. Through Robert Jones and Mr. Rhines, and some local people who were supposed to be heirs.

Q. You say that you were not an heir?

A. Yes, sir.

Q. When did you say you first met Mr. Gridley?

A. It was in the Spring of 1923, as I recall it.

Q. Several months after then?

A. Yes, sir.

Q. Do you know then when it was that these men that you spoke of approached you on the subject?

A. Well, I would say either in October or November of 1922.

Q. It was from 6 to 8 months afterwards before you saw Mr. Gridley?

A. I do not think it was that long.

Q. When do you say it was that you saw him?

A. Well, I think it was in the early spring of 1923 after arrangements were made with him to work on the case.

Q. Do you know a Mrs. Lutz?

A. I know of her, yes, sir.

Q. Did you have anything to do with sending her to New York?

A. No, sir.

Q. She belonged to your Society there, didn't she? [94]

A. She belonged to the Philadelphia Society.

Q. Wasn't that a branch of the same Society that you belonged to?

A. Yes, sir.

Q. That has not anything to do with the present organization, known as the Anneke Jans Society as it exists today?

A. It has no connection that I know of.

Q. No connection whatever?

A. Not that I know of.

Q. You say you were vice president and treasurer.

A. That is my recollection. I know I was treasurer, and I think I was vice-president.

Q. Don't you know also that you were president?

A. Later on.

Q. Yes. You did not testify to that this morning, did you?

A. No, sir.

Q. When you were asked that, why didn't you say you were president?

A. I did not recall it until after I had gone out to lunch.

Q. Now that I suggest it, you do recall it?

A. I am under that impression, yes, sir.

Q. Don't you know that you were?

A. I am. I acted later on.

Q. You knew that Mr. Gridley at the time was not a practicing attorney, didn't you?

A. He informed us of that himself.

Q. You knew that he could not file a lawsuit for [95] you, didn't you?

A. Sure.

Q. You knew that he could not represent you in court, didn't you?

A. Yes, sir.

Q. Do you remember a meeting that was held by your National Committee at Kingston, Pennsylvania, on the 9th day of June, 1923?

A. I do not know as to the date, but I know we had a couple of meetings.

Q. You know of that meeting, do you not?

A. I do not know of that date.

Q. Do you know of a meeting that was held of your National Committee?

A. Yes, sir.

Q. Do you know whether minutes were taken of that meeting?

A. I presume they were. I am not acting secretary and I cannot answer that.

Q. Wasn't it your practice to take minutes?

A. I believe so.

Q. Don't you think the practice was followed out at that time?

A. Why, I cannot answer that question. [96]

Q. How many meetings did you have of this National Committee while you were connected with it?

A. We had several meetings, not so many authorized meetings, but we met quite often in the office and talked over the routine of business?

Q. How many formal meetings did you have?

A. I cannot answer that question.

Q. Did you have more than two?

A. I think so.

Q. Well, do you recall that on or about that date that you did have a meeting?

A. Yes, sir.

Q. And that was a formal meeting, was it not?

A. I believe it was.

Q. Do you remember when you were made president of the Society?

A. I cannot remember the date.

Q. Wasn't it at that meeting?

A. I do not know.

Q. I hand you this writing and ask you if that refreshes your recollection. Look at the head notes. Does that purport to be—

MR. WATKINS: I object to what it purports to be. It speaks for itself.

THE COURT: **If the witness knows I will let him state what it is. If he does not know, why, he cannot.**

Q. Now, Mr. - -

A. Just a minute. (The witness examined the [97] document.) I do not believe that is a copy of the minutes.

Q. Is there anything that occurred at that meeting that is not transcribed here?

A. I do not know.

Q. Is there anything in there that did not take place?

A. I cannot recall; I do not believe there was ever a copy of a report of our secretary.

Q. In so far as you know it is correct, is that true?

A. I have not read it thoroughly. There is some of it that is true, but you did not—

Q. (Interposing): Is there anything that you have read that is not true?

A. I could not say. I could not answer that question intelligently because I have not had sufficient time to go all through it.

Q. Didn't you understand my question?

A. Sure.

Q. I say, is there anything that you did read that is not true?

A It may be true. A lot of it was routine of business, and some of it I believe is true.

Q. Do you mean to say that you do not recall as to whether or not some of it is not true?

A. I mean to recall that I do not know all that that report is supposed to contain, and I do not believe it is a report of our secretary.

Q. Have you got a copy of those reports?

A. No, sir.

Q. You knew that you were subpoenaed up here [98] as a witness did you not?

A. Yes, sir.

Q. Didn't you think that would be material in this case?

A. I did not give it—

Q. (Interposing): Didn't you think these minutes would be material in this case?

A. No, I did not consider it as such.

Q. Did you bring any papers here at all?

A. Some.

Q. And that is not among those papers?

A. Not in my papers.

Q. Nothing of the kind?

A. No, sir.

Q. **You were treasurer of the Society at this meeting?**

A. **Yes.**

Q. **And elected president?**

A. **Yes, sir.**

Q. You say that you are not a member of the fam- [99] ily; you are not a member of the family?

A. Of the heirs?

Q. Yes.

A. No, sir, I am not.

Q. You knew then that you could not inherit any property as a result of a lawsuit, didn't you?

A. Absolutely.

Q. Yes?

A. Yes, sir.

Q. Then why did you join the Society?

A. Because I was asked to become—to attend the meetings, and they elected me to those offices.

Q. Just used you as an accommodation party then?

A. I guess you would term it that.

Q. **If, as a matter of fact, the proposition was to publish a book, you could come in on that and share, couldn't you?**

A. Absolutely not.

Q. Why couldn't you?

A. The book was not mentioned at the time.

Q. I say, if the proposition was to publish a book, and you were to share in that book, you could do that, couldn't you? And share in the profits if there were any?

A. I was not a member of that, though

Q. Just repeat that question. [100]

(The question was then read by the Reporter.)

MR. WATKINS: I object to that as calling for a conclusion

THE COURT: It is argumentative I will exclude it as argumentative

Q. And yet you say at that time that there was not anything talked about a book?

A. Not to my recollection.

Q. It may have occurred then and you do not recall it?

A. I do not recall it at that time, no, sir.

Q. **How many times did you go to New York to see Mr. Gridley?**

A. **Oh, I cannot recollect. It was several times.**

Q. **How many times did you see him?**

A. **Oh, probably from four to maybe half a dozen times.**

Q. Three or four?

A. Yes, sir.

Q. **You won't be sure that you were never there to see him but twice?**

A. Oh, no; I think I was oftener than twice.

Q. Are you sure about it?

A. **Well, to the best of my recollection it was more than twice.**

Q. Was Mrs. Wright there each time?

A. Every time I have been there, I am sure that Mrs. Wright was there.

Q. She was the stenographer, was she not?

A. **I never heard her mentioned as a stenog- [101] rapher, only when he was a lawyer—**

Q. (Interrupting): Don't you know that she is a stenographer?

A. All that I know about her capabilities are through—

Q. (Interrupting): Don't you know that she is a stenographer?

A. No, sir.

Q. **Did you see her pound a typewriter at any time when you were in New York?**

A. **I may have; I would not be positive.**

Q. Did you see her transcribe any notes?

A. I do not recall it.

Q. Did you ever see her take any shorthand notes?

A. **I do not recall of ever seeing her taking any shorthand notes, unless it might have been at that meeting in our store.**

Q. **Yes, that you do recall, don't you?**

A. **I say I do not unless it was—**

Q. **You say "unless." Don't you know that she did take the notes stenographically at the meeting in Wilkes-Barre?**

A. **I am not positive of that.**

MR. WATKINS: I object to that as clearly calling for a conclusion. If he never saw them written up, he does not know whether she took them or not.

Q. Well, did you see her go through the motions, the same as the stenographer is here, of taking stenographic notes?

102-104

A. As a matter of fact, you know that he was engaged in the manufacturing business, don't you, at that very place? [105]

A. Not when I first met him, no, sir.

Q. Where did you first meet him?

A. At that place.

Q. Wasn't he engaged in manufacturing there then?

A. Not when I first met him.

Q. Wasn't he operating or running that business at that time himself?

A. I could not answer that question.

Q. And yet that is right where you met him, in the factory?

A. No, it was not in the factory. The factory was separated from the office.

Q. There was a partition between the factory and the office, was there?

A. Yes, sir.

Q. As a matter of fact, that is quite true of most all offices and factories, isn't it? [106]

A. Oh, yes.

Q. Nothing singular about that?

A. Absolutely not.

Q. He could still have been operating that factory and have his offices in the front of it?

A. Yes, he might be the owner of it, so far as that goes.

Q. You found him there on the occasions that you went to New York to see him?

A. I think I found him there every time but once, and I am not sure but what I found him there every time.

Q. Did he ever show you the mass of books that he has collected?

A. No, sir.

Q. You never saw any of those?

A. No, sir.

Q. Did you make any demand on him to show you those things at that time, or any of the times that you went there to see him?

A. I made numerous demands to be shown how far he had progressed on this case.

Q. But you never asked him to see any of these books?

A. He told me—

D. Did you or didn't you?

A. What?

Q. Ask him to see any of these books?

A. That is a question I do not understand. If it is pertaining to the evidence or the case he was working on, it is different.

Q. I will ask it of you in this way, did you ever ask him to?

Q. You say that you never went to his office alone? [107]

A. I did not think I ever did.

Q. Who else accompanied you?

A. Why, Mr. Jones and Mr. Teft.

Q. Both at the same time?

A. At one time they both were there; at another time I think Mr. Jones was there.

A. Yes, sir. [108]

Q. Did your National Society have a local attorney at Wilkes-Barre, or any of the other towns there?

A. For a short while.

Q. Did you consult him relative to your activities?

A. We consulted him, and also sent him to New York to make arrangements with Mr. Gridley.

Q. Did you make him acquainted with the fact that Mr. Gridley could not prosecute the suit for you?

A. That was known. We knew that.

Q. You knew that?

A. Yes, sir.

Q. Did you talk with this attorney about the circumstance of your proposed case?

A. Yes, sir, he was an heir.

Q. You talked with him about it?

A. Sure.

Q. Did he tell you that you could go down to New York and kick those people off some property down there?

A. That is putting it pretty strong.

Q. Well, that is putting it bluntly. Did he tell you that you could do anything of that kind?

A. I do not think that we talked—consulted his opinion on that matter very much.

Q. But you had a local attorney, and the most vital thing to you you did not consult him about at all?

A. I am not saying that I did not. He reported [109] back to us the arrangements he had made with Mr. Gridley.

Q. Did you explain the fact that the Trinity Church had been in possession of this property for more than 200 years?

A. Oh, yes, sir.

Q. Didn't he tell you that adverse possession would interfere with your recovering under a lawsuit?

A. No, sir.

Q. He did not?

A. No.

Q. And yet he is an attorney?

A. Absolutely.

Q. Now, do you pretend to know how many members the National organization had?

A. No, I cannot give you any definite number because, as in Michigan here, the different societies would turn all money over to the State organization, and they in turn would send it on to us. We have a record of it.

Q. Didn't you attend a meeting up here at Jackson, Michigan?

A. Yes, sir.

Q. Do you recall what occurred at that meeting?

A. Not exactly, no, sir.

Q. Wasn't there a discussion there in which it was agreed that you were interested in a book publishing proposition, and that was so stated and all agreed.

A. No, sir.

Q. Will you say that nothing of that kind was [110] spoken of?

A. Not to my knowledge at that time.

Q. Did you write a letter to Mrs. Lutz on or about January 5, 1923?

A. I do not recall.

Q. Do you know your signature?

A. I ought to.

Q. Is that it?

A. That is it.

Q. Did you write that letter to Mrs. Lutz?

A. I presume that I wrote it. What dating is that?

Q. July 5, 1923 is the date.

MR. WATKINS: What date?

Q. July 5, 1923.

MR. WATKINS: You said January 5.

Q. I did? Then that was wrong. I ought to put my glasses on then.

When was it that you made up your mind that you wanted to get out of the Society?

A. Oh, I do not recall that. But it was about the time when Mr. Gridley concluded to issue or wanted to issue this book.

Q. I will ask you if you wrote to Mrs. Lutz, "To be very frank with you—"

MR. WATKINS: Well, your Honor, if we are going to talk about what was written, I think the letter is the best evidence as to what was written.

THE COURT: I will sustain the objection.

Q. Will you read what you wrote right there in [111] those few lines?

MR. WATKINS: I object to that until it is marked as an Exhibit.

THE COURT: I will admit the letter in evidence, and now you may read the whole letter. That is Exhibit 2.

MR. McARTHUR: No objection.

(The letter was then marked Exhibit No. 2)

112-113

Q. Does it bear the date of December 8th, 1922? [114]

A. No, sir.

Q. What date does it bear?

A. It does not bear any date.

Q. What does the first line say about the date?

A. On the 8th day of December, A. D. 1922, there was a meeting of the above-named heirs from all parts of the United States in the Y. M. C. A. building in the City of Wilkes Barre, Lucerne County, Pennsylvania.

Q. That is the only date it bears, isn't it?

A. Yes.

Q. Was that sent out immediately following that?

A. I don't know; not immediately after, I do not think, but very shortly after, possibly.

Q. You say this was sent out shortly after the date that it bears?

A. I could not answer that question intelligently.

Q. Well, didn't you so state just a minute ago?

A. No.

THE COURT: He said that was not dated. That is what he actually said. You include in the question that it does bear a date.

Q. Well, I think he was talking while you were talking to the jurors, Judge.

A. Oh, I did not say that.

Q. The stenographer will have a record of that.

THE COURT: I understood him to say that the paper was not dated. Maybe it will show on the face [115] of it whether it was or not.

Q. Will you read that answer?

(The preceding answer was then read by the Reporter.)

Q. So it was sent out shortly after that?

A. I would not swear to that.

Q. Your first statement, you are not sure now whether that is true or not.

A. It is so stated in my reply.

Q. That was several months before you knew Gridley, was it not?

A. When that—

Q. Yes.

A. No, I don't think so.

Q. When was it that you knew Gridley?

A. I am not positive as to the month, but I think it was—

Q. You said in the Spring of 1923, did you not?

A. Yes, sir.

Q. And that is true, isn't it?

A. Absolutely.

Q. Then this is several months before?

A. I cannot swear.

THE COURT: What?

Q. This paper.

THE COURT: He said he did not know whether it was sent out.

Q. He said it was shortly after, and this bears date December.

A. I said it was shortly after, I think.

Q. You did quit the Society shortly after you [116] knew him, didn't you?

A. No, sir.

Q. Did you read this over?

A. I presume I did when it was printed.

Q. Glance it over now, if you will (handing the document to the witness.)

A. (The witness examined Exhibit No. 3.)

Q. Is there anything in that about a book?

A. No, I do not see it.

Q. And this meeting that you are speaking of was December, 1922?

A. Yes, sir, that was about the time.

Q. You did not see Gridley until the Spring of 1923?

A. I think that is right.

Q. Shortly after you saw him in the spring of 1923, you quit the Society?

A. No, sir.

THE COURT: He said not.

Q. When was it you quit?

A. Not until October. [117]

Q. Within six months after you first saw Gridley, you quit the Society?

A. No, it was longer than six months, I think.

Q. All right.

A. Or about six months.

Q. From the Spring until October?

A. At any rate, it was the expiration of the agreed time in which he was to prepare the documents.

Q. And yet you were complaining to the members of the Society that they were not moving faster and raising funds. You made that communication in this letter that you have just read, you were complaining about their delay?

A. Yes, sir.

Q. Well, there did come a time when Mr. Gridley told you emphatically that he would not have anything to do with the lawsuits, didn't he?

A. Told me that?

Q. Yes, wasn't there a time when you knew that that was his attitude?

A. I do not recall that.

Q. Don't you know that that was his attitude?

A. No, I do not recall it.

Q. Do you mean to say that you cannot remember an important affair like that in connection with this?

A. No, I have not any recollection of such a procedure off hand.

118

A. He came to the conclusion of printing a book, but he never said anything about the lawsuit. [119]

Q. When was the time that you hear his proposition was the publishing of a book?

A. Why, I cannot tell exactly. It may have been September or October.

Q. What year?

A. 1923, after the expiration of his time limit for preparing the case for court.

Q. Then you did not hear anything about a book publishing proposition until that time?

A. Round about that time.

Q. Were you at the meeting at Jackson all through the meeting?

A. I think so.

Q. Then if it occurred at that meeting, you heard it, but you do not now recall it.

A. I would not say that.

Q. Didn't Mr. Gridley resign from your organization prior to the time that you quit the organization?

MR. WATKINS: Just a minute. There is no evidence yet that Mr. Gridley was ever a member of the organization.

Q. Well, resign or withdraw as any sort of a representative of your organization, I will put it that way.

A. Mr. Gridley never resigned from the Association that I recall from the time that I was connected with it until I left.

Q. Didn't he write a letter to your Association [120] and tell you that because you were talking lawsuits that he was forced to quit?

A. No.

Q. You never heard of such a letter as that?

A. No.

Q. Didn't your secretary read it to your Association?

A. No, I do not think so.

Q. You never saw such a letter?

A. No, sir.

Q. Well, he did resign, didn't he?

A. Not that I know of.

Q. You do not know that he quit your organization before you did?

A. No, sir.

Q. You were still secretary or president at that time?

A. No, president and treasurer.

Q. Were you president up to the time that you resigned?

A. Yes, sir.

MR. McARTHUR: I ask the People to produce the original of this letter (indicating).

MR. WATKINS: I do not know who wrote that letter. It is not signed.

THE COURT: Have you given them notice to produce?

MR. WATKINS: No notice to produce has been served, and it is not addressed to anybody, and it is not signed by anybody. I don't know what it is. Maybe I have got it and maybe I have not. I cannot remember. [121]

MR. McARTHUR: Will you produce it if you have it?

MR. WATKINS: Certainly, if I have it. I cannot tell from that who wrote the letter, or who purports to have written it, or to whom it is written.

MR. McARTHUR: May I ask if Murray Roat will be a witness?

MR. WATKINS: Murray Roat is on the stand now.

MR. McARTHUR: Yes. His name is attached here. Who attached it?

MR. WATKINS: It is not in the body of the letter, it is written on there in lead pencil.

Q. (By Mr. McArthur): Refer to it and see—particularly look at this paragraph and see if it refreshes your recollection.

MR. WATKINS: I object to the use of this paper until the original is produced.

THE COURT: I will exclude it.

MR. McARTHUR: Is there any objection to his refreshing his recollection?

THE COURT: I exclude the document, one of which he knows nothing, for the purpose of refreshing his recollection.

THE COURT: The authenticity of it is not proven [122] at all. So far as it goes it is a piece of paper with some marks on it. Nobody knows who put them on there, so far as it stands on the record.

Q. (By Mr. McArthur): I will ask you, witness, if on or about May 29, 1923, you wasn't made acquainted with the fact that Mr. Gridley had communicated to your Society in which he stated that he was resigning from your society?

MR. WATKINS: Just a minute. It depends on how this communication was made; if it was made by letter the letter is the best evidence of whether or not any such communication was made to the society or not. Now, if it was made verbally I haven't any objection to the witness telling about it, if he heard the conversation.

MR. McARTHUR: I don't think, your Honor please, he understood my question or he wouldn't make this objection. Will you repeat the question?

THE COURT: What difference would it make with him whether he heard about it or not? I don't see that it affects his testimony, as part of his cross examination.

MR. McARTHUR: My point is this, your Honor. He as president of the society at that time would have knowledge of the communication that was sent in, and if that communication was

THE COURT: He said—

MR. McARTHUR: Or if there was anything relating to it that was reported.

Q. (By Mr. McArthur): Do you recall whether there was anything said at any of your meetings along about May 29, 1923, in which it was stated that Mr. Gridley had resigned as a representative of your organization [123] because you were trying to promote a lawsuit?

A. No, sir. A law suit was never mentioned of any kind.

Q. I will ask you if as a matter of fact you and Teft did not go to New York and try to get Mr. Gridley to reconsider and stay on as your representative?

A. I don't recall any such conversation. I went to New York.

Q. What was the purpose that you had in going to New York to see Mr. Gridley?

A. Why, to find out something about his work which he had promised to do.

Q. Didn't you ask him at that time to reconsider it and to stay on as your representative?

A. I don't recall it.

Q. Well, will you make a search for this letter I have referred to that we claim was written to you on May 29, 1923?

A. Surely.

Q. You will search for that letter, will you?

A. Yes. Is that the supposed copy of it? (Indicating to document in Mr. McArthur's hand)

A. Yes, sir.

THE COURT: You better furnish him a copy of it.

Q. Did you ever see a copy of a resignation from Mr. Gridley?

A. No I don't think so.

MR. McARTHUR: I am simply giving him this for the purpose of assisting him to locate that letter.

MR. WATKINS: That is all right. [124]

MR. McARTHUR: That is all. Excuse me just a minute.

THE COURT: Have that marked for the purpose of identification exhibit 4.

(Document marked Exhibit 4 for the purpose of identification by the reporter).

THE COURT: So that there is no question about its identity. That does not admit it in evidence. It just identifies it.

(Document marked Exhibit 5 by the reporter). Admitted page 324.

MR. McARTHUR: I show you this paper and ask you what that is. Just identify it. What is it?

A. A copy of a letter from the Philadelphia Branch of G. Murray Roat, but I am trying to see if there is anything that refreshens my memory of receiving this. This was dated, at what time?

May 17.

MR. WATKINS: Is this the original, or copy?

MR. McARTHUR: It is one of the originals.

A. A copy.

THE COURT: Did you ever see that paper before?

A. I don't recall it. Just about a time that we were having trouble with Mr. Gridley about him not doing things for the money received. At that time Mrs. Lutz was a very good friend of Mr. Gridley. I know there was some letter, but I don't recall getting a copy of it.

Q. (By Mr. McArthur): You don't recall that you received such a letter as that?

A. I heard something about it, but that is the first time I ever saw the letter.

Q. You have glanced through this, have you? [125]

A. Not much. I knew about what the contents was.

Q. You knew about what the contents was?

A. I know now by glancing over it a little bit.

Q. Didn't you say you knew what the contents was?

A. No, sir.

MR. McARTHUR: That is all.

RE CROSS-EXAMINATION

BY MR. McARTHUR:

Q. Witness, as a matter of fact, didn't Mr. Gridley send you from time to time as these records were purchased, bills of those purchases?

A. I don't recall receiving them.

Q. You won't say that he did not?

A. I did not say so.

134

Q. I will ask you if from time to time he did not send you receipts for purchases of records and books? [135]

A. I don't recall that. He had made requests for buying a certain book for some purpose that would give him the desired information.

Q. You have referred in your letter though that the District Attorney has just read to you three different purchases at one amount something over $300?

A. Correct.

Q. You knew that those were records, didn't you, and maps?

A. We procured lots of maps from Albany, photostats, copies.

Q. Now those all could have gone in a genealogy and a book, could they have not?

A. I don't know what he was going to do with them.

Q. You say you don't know what he was going to do with them?

A. No, for information for his case.

Q. Now it is true that you don't know what he was going to do with them or that they were for his case?

A. Why, we naturally inferred they were for his case. [136]

Q. You inferred that?

A. Yes, he wanted them for his case.

Q. You don't know but what he was getting facts for the publication of a book, do you?

A. No, he wrote, we sent for them to prepare his case.

Q. That was your notion about it, wasn't it?

A. No, no he made a request.

Q. Have you any communication from him of any kind, that is, that he was getting those records for the prosecution of a case?

A. That was the only thing that we know of.

Q. Will you answer that question?

A. I have not any knowledge of it one way or the other.

Q. You can't produce a single scrap of any kind to show to this jury that he was procurring those records for the purpose of prosecuting a suit, can you?

A. I would not say I could not. I may be able to.

Q. Who do you say this man was that finally went to Albany and secured these records?

A. My secretary, Robert Jones.

Q. Did you make any communication to Mr. Gridley that those were solely for the purpose of prosecuting a suit? Did you make any such communication?

A. Certainly not.

Q. But there came a time, did there not, when you knew that your minds did not meet; that he was talking about a book publishing proposition and you a suit, and then you quit the society?

A. No.

Q. Isn't that true? [137]

A. That is not correct.

Q. As a matter of fact, didn't Mr. Gridley quit before you did because you were doing that?

A. No, he never quit.

Q. Didn't he resign from the society?

A. No.

Q. Didn't you get a communication of that kind?

A. I have not any recollection of it. The checkbook shows that he worked right along.

Q. Up to when?

A. October.

Q. Isn't that about the time that he resigned?

A. I don't know what time he resigned.

Q. I will ask you if he did not say something to you about making false representations as to the number of members you had?

A. No, he never mentioned that.

Q. Did you make claim to him that you had 2,000 members and you did not have anywheres near it?

A. I did not. How was I to know how many members we had?

138

Q. (By Mr. McArthur): Will you state again when you left the society? [139]

A. About October, 1923.

Q. What were you collecting in monthly dues during that time that you were the treasurer of the society?

A. I can't tell you. The book is there.

Q. Don't you have any recollection about that, without referring to your books?

A. No, sir.

Q. And you say that you had something upwards of 1,000 members?
A. Approximately.
Q. So you were collecting in the neighborhood of $2,000 a month?
A. I don't know how much we collected. The book will show.
Q. When you made Exhibit 1, your financial statement, how much did you have balance on hand at that time?
A. $319.59.
Q. And you were still treasurer at the time you [140] made that report?
A. Yes, sir.
Q. And still collecting dues?
A. Yes, sir.
Q. What did you do with the money?
A. Spent it.
Q. Did you return it to these people as they requested you to?
A. Nobody requested that the money be returned.
Q. You say that you have not any of that money today?
A. No.
Q. Did you account for all this money to the society?
A. Which society?
Q. The society to which you belonged, that you owed it to. Did you or did you not?
A. What?
Q. Did you account for all of it?
A. That is the statement there accounting for it.
Q. This statement shows at this time you had $319.59, and that you were still treasurer?
A. Yes. [141]
Q. And collecting at the rate of something over $2,000 a month. What did you do with the money?
A. I did not say we were collecting $2,000 a month.
Q. You stated that you had 2,000 members or more?
A. I did not.
Q. What did you say?
A. Approximately.
Q. All right.
A. And they did not all pay.
Q. Well, what did pay, what did you do with the money?
A. Spent it.
Q. You say that nobody made any demand on you to return that money?
A. The dues paid in?
Q. The money that you had at the time you resigned?
A. Nobody ever made a demand on me that I have a recollection of. They could not have got it if they had, because it has been spent.
Q. And specifically you say that Mrs. Lutz never made any demand on you?
A. Not at the time I resigned.
Q. When did she?
A. I don't know when, if any time. [142]
Q. You say not at the time you resigned.
A. Yes, and that at any time that I recall.
Q. I showed you this paper, didn't I?
A. Yes, sir.
THE COURT: Exhibit what?
MR. McARTHUR: Exhibit 5.
Q. You read it over?
A. Yes, sir.
Q. You said you did not remember receiving such a communication from Mrs. Lutz?
A. Yes.
Q. Isn't it because you do not want to remember it?
A. Absolutely not, absolutely not.
Q. You know what she charges in here, don't you?
THE COURT: Exclude that.
Q. Did you ever sue Mrs. Lutz for slander?
A. I should say not.
THE COURT: Now, then I see you, lady, right back there laughing out loud. I will not permit it, I am telling you, I will put you in jail. I am not going to have you come in here and laugh at the answers that are given here. Go home if you can't. If you have not control over yourself, stop that, walk out the door, go home and stay home. If you can't control yourself enough to keep your mouth shut and stop making noise, you will have to go home. I am looking right at you. You do not need to look down [143] or around. Go ahead now. Don't grin about it now. I mean it. Go ahead.
Q. Mr. Roat, when you resigned as treasurer of this Society, did you take any of the funds belonging [144] to the Society with you?
A. No, sir.
Q. If there were any funds in your hands at that time as treasurer, they were turned over to the Society, is that correct?
A. If there was any, yes.
Q. Do you know whether or not at the time you resigned there were any funds on hand?
A. No, we were short of funds.
Q. I will ask you whether or not you ever made any money yourself out of being treasurer of this Society?
A. No, sir.
MR. McARTHUR: I object and ask that it be stricken, no bearing on this. It does not make any difference whether he made any money or whether he did not.
THE COURT: I will permit it because of your suggestions in your questions that he did.
MR. McARTHUR: Note an exception.

As further proof that Roat, Tefft and Jones came to me September 28, 1923, only to ask me to reconsider my determination to quit, and that it was after receipt of my resignation, which they all testified was not received by them, I give verbatim the following letter, which was prepared, as will be seen from its contents, in keeping with the pledges made to me at that interview, and to preclude these people from making these promises of lawsuits, and which stated the only provisions upon which I would continue to do business with them.

Roat in his testimony, either the first or the second time he took the stand, stated that he received the letter, or pledge, but he did not sign it. Hence he is precluded from making the claim that he did not receive my resignation, for in acknowledging receipt of this letter, he acknowledged receipt of the resignation; that letter states "having asked you to reconsider your determination to resign from this work."

Roat testified he received the letter, but that no man with any self respect would sign it.

Thus finally in October, 1923, that chapter was concluded.

So that when Roat testified that it was not until October, 1923, he knew that this was a book-publishing plan, he testified falsely, for his letter of May, 1923, contradicts that; when he testified that his visit to me September 28th, 1923, accompanied by Tefft and Jones, was for the purpose of ascertaining "why Mr. Gridley had not prepared the case that he was intended to, to produce to the courts of New

York; and becoming discouraged with the methods of procedure, and learning of the book that he proposed to issue, I lost all confidence in the case and withdraw," he testified falsely, for this letter, which he acknowledged receiving, contradicts him, as also does the testimony of Mr. Thomas Grover.

GRIDLEY TO ROAT

October 2nd, 1923.

Mr. G. Murray Roat
Kingston, New York.

Dear Sir:

Feeling, as I do, that I owe a duty to those persons interested in this cause, who have had nothing to do with this late unpleasantness, and that if I stepped out as it was my original intention to do, I would be hurting those who have supported this cause through their faith in me, I have composed the following letter for you to sign, which is practically what was discussed at the conference in my office between you, Mr. Tefft, Mr. Jones and myself, and which you agreed to and stated, except of course what I have written in regard to your letter of September 27th, and your telegram of the 28th, of which I had no knowledge when you were in the office, and which you did not then mention to me.

Mr. W. T. Gridley,
P. O. Box 71,
Times Square Station,
New York City.

Dear Sir:

In order to straighten out the present differences and to give you every assurance of my loyalty, and for the purpose of keeping my pledges to you, I wish to state and reaffirm:

When we found it necessary to abandon the original reinstatement plans, you proposed to the National Committee the present plan on which we are now working, to wit: the publication, in booklet form, of all the records, proofs, etc. in this matter, together with a treatise on the legal propositions involved, which would be sold to the public, with a view of first creating favorable public opinion to insure a fair hearing, and secondly, to provide the necessary finances.

The publication is to cover what we term, an unwritten chapter in the history of Manhattan, and to deal minutely with the questions involved in the Bogardus controversy, which historians have heretofore, either utterly ignored, or treated summarily and most briefly, and which the public press has always ridiculed with little regard to the truth or the facts.

Your plan also provided that after the publication of the book, the different societies in each state would select a leading attorney to examine and go over the proofs contained in this publication, and that they would then be called into a general conference for the purpose of agreeing upon the future course in this matter.

When you laid the above plans before the Executive Committee, they were unanimously endorsed, and we also gave you our pledge that we would stand back of you and give you the final O.K. of the leading attorney to be selected, who would have the co-operation and counsel with those selected by the societies from the different states until the finish of this matter.

You emphasized the importance of having the heirs in each State represented, and their representative in touch with, and consulted as to each move made, in order that they would have confidence and be assured that everything was being done that could be done.

That at that time you emphasized, and have ever since, the necessity for establishing favorable public opinion, as a foundation and essential element to success in this matter; that you have always held the opinion that success will not attend this effort unless that favorable public opinion is created; that the public must be informed of the true facts, and in order to do this we must adopt the same tactics our adversary has been following for the past hundreds of years, as the result of which the stand taken by the heirs has been so ridiculed that they have become a laughing stock before the world, all with a view of disheartening them, undermining their will, and causing them to abandon their efforts to fight this just cause to a finish. That this shall be the supreme effort to settle this controversy, once and for all time, in order that our descendants shall not inherit this unsettled question as we have done from our fathers and forefathers.

Now, as I have said before, we endorsed your plan, and pledged you the generalship of this matter to the very end, and I want to now renew my pledge, and I believe the National Committee will renew theirs—to stand loyally back of you to the end of this controversy, and will not attempt to make any changes in these plans, without first consulting you, and that you shall have the final say as to whether there shall be a change under any circumstances.

I wish to assure you, that I recognize, as you explained on the 28th Sept. when we were at your office, the soundness and the force back of your plan to have leading attorneys from each State representing the heirs in all conferences, and as to all plans made, after the publication of the book, containing the proofs, etc., men of the highest standing in their State, men who have the reputation of giving sound opinions, and who, when they present this question will demand, and be able to command fair and square consideration of the questions involved.

Further, when I wrote you on September 4th enclosing draft for your expenses to Michigan, I used the words "inasmuch as most of your visit will be taken up in business conferences . . . . . however as the outcome of your visit to Michigan will be the pivot on which way the future will be directed" I want to assure you that in the conference with the attorney in Michigan, plans for which were made without consulting you, I did not intend or expect that you would disclose the points or facts on which you base your opinion, and which you have gathered through your years of hard work; that such was not my intention or purpose, nor will I ask you at any future time, before the publication of this book, to give, or furnish this information to any person whomsoever, but that the facts shall be first presented in this publication—all in accordance with the original agreement made with you. I wish further to assure you that I heartily approve of your refusal to give this Michigan attorney this information, although he said he would take his client and come to New York and bring a suit at once. I agree with you that a suit would be premature at this time, and would probably set back this question five years, if it did not kill it for all time, without first having laid the foundation for favorable public opinion, and having it thoroughly established, to accomplish which we must become thoroughly organized, and every effort devoted to give publicity to the true facts in this controversy.

I further admit that I wrote a letter on September 23rd to the head of one of the Societies of our Order, who in her

loyalty to this cause felt that it should be submitted to you for answer. That in this letter I made use of the statement "If Gridley plays fair our case is assured—you will understand when we meet." I am willing to admit that this would indicate that I had attempted to change our original plans without consulting you, and after a calm consideration of the whole matter I agree with your original plans, and will stand by them.

On September 27th I wrote the same party a letter of which the following is a copy:—

Dear Madam:

Yours of the 25th inst. received, and I am at a loss to know why you have addressed me as you did, but being in business a great many years, I can read between the lines, and know who is at the bottom of all this trouble that is beginning to circulate. In the first place I wish to inform you that the Treasurer's report you received are reports, and not a trial balance, and the party who is responsible for you writing to me, if they would attend to their end of the business as well as you and I have attended to ours, the case would be much farther advanced.

As to the moneys you have sent the books show you have paid $1121.00, and whoever informed you that it was only $700 only goes to prove they did not know what they were talking about, and wished to create trouble. The receipt for $60.00 and your expense check was mailed you several days ago and should have been delivered before this.

Just one word of advice, the persons responsible for your writing me as you did are doing the same elsewhere, and neglecting the one important issue, and furthermore being at a point where they must produce or show their hand, the easiest way out of it is to cause internal strife in the Association. As far as you taking steps to have my books audited, I really don't believe you realize what you are writing or you never would have written same. Understand I have nothing to cover up and my books are always open for inspection for anyone who wishes to know anything concerning the affairs of the National Association.

Again regretting very much that you have been induced to write me as you did, I remain,

Very truly yours,

G. Murray Roat.

I also admit that after leaving the conference between Mr. Tefft, Mr. Jones, you and myself—and after having asked you to reconsider your determination to resign from this work, I telegraphed the following from New York to this same lady:—

New York, N. Y., September 28th, 23.

. . . . .

"At conference here everything satisfactory
do not mention my letters to you.

G. M. Roat,
4:25 P. M.

Now, Mr. Gridley, I am willing to admit that from this letter there is no other conclusion to be drawn than that I meant you, and that I had absolutely no foundation for accusing you of inspiring the letter this lady wrote to me, except the condition of my own mind, and that when I stated, that I could read between the lines and know who was at the bottom of all this trouble that had begun to circulate, I had not a scintilla of proof to connect you with it, except the fact that it coincided with what you said to me as to the kind of monthly statement which should be furnished, when you exacted that a statement should be furnished to the members of the Order before you would consent to go to West Chester and Michigan to speak, claiming that if you were to have anything to do with the raising of funds to carry on the work, you would insist upon the heirs having a monthly statement showing the amounts received, from whom received, stating initials of the parties, and the amount, with a detailed statement of the expense so that there would be no cause for the heirs to say that they did not know for what the money was being used, and that they would know every cent was being used for what it was intended. I admit you took the position that as long as your name was not used to raise funds, it was none of your business, but that when the reverse took place you had a perfect right to make it your business. I am willing therefore to concede that your position in this regard was sound, and that if you come back into this work, it shall be incumbent upon whoever the treasurer may be to furnish such itemized monthly statements.

I am also willing to admit I was in the wrong when I made the statement that if the party who is responsible for that person writing to me as they did would attend to their end of the business as well as I and that lady had attended to ours, the case would be much farther advanced —because I know that aside from certain designated expenses, which you advised, there has been little over $500. given you, under the resolution of June 9th meeting, to proceed with the publication of the book, and I also admit that you have told me repeatedly that the records obtained are not one-tenth of the necessary records, and that the amount disbursed would not even pay a small part of the paper necessary to furnish the book—so that such an inference on my part is wholly unjust to you.

I am willing to admit that in making the statement that whoever informed the lady that it was only $700. only goes to prove that they wished to create trouble—I then had no proof of who had done this, and that I now know you had nothing whatsoever to do with this, and that the report originally emanated from a lady who has been working in the headquarters' office.

I am further willing to admit that in making the statement that you are writing elsewhere—I cannot give you the name of any person to whom you have written in this regard, and that therefore I am accusing you wrongfully.

I am also willing to admit that you are not "at a point where you must produce or show your hand, and that the easiest way out of it for you is to cause internal strife in the Association"—simply because I know you have not been given sufficient funds for you to consummate your plans, and that being treasurer, I know just what funds have been sent to you and what has been done with them. Neither do I know of any strife you have created in the Association. I want to also say that when the funds were not forthcoming to go ahead with this work in fact just about sufficient to carry the agreed overhead expenses, you kindly offered to help make suggestions as to correspondence, and which you have been doing for some time, and to do anything else possible to provide the finances with which to let the publication work go forward—repeatedly saying that it was no use to give you your overhead if nothing outside of that was furnished to further the work.

I am willing to admit that you have written to me before in regard to blaming the delay in this matter upon you, and asking me to rectify such statements, and that I have not answered your letter.

Mr. Gridley, I feel that you were justified in your belief that I was disloyal to you and to this cause in arranging for a conference with that Michigan attorney at which ap-

parently you were expected to disclose your hand, without first consulting you as to the advisability of such a move; that following such a move on my part with the letter to this lady stating that "If Gridley plays fair our case is assured" I was but showing that I had expected you to divulge the result of your years of work to this attorney for his consideration.

I am perfectly willing to admit that I made a grievous mistake in sending this letter of September 27th "that you are at a point when you must produce or show your hand," when I know full well that the money has not been furnished to further your plans, and that you have a right therefore to conclude that I meant you were at a point where you had to show your hand to this attorney, and that I know full well no assurance had been made to you that this party would do anything more for the cause than just consider what you had to offer, and that in such a move I was disregarding my solemn pledges to you. I am willing therefore to admit that you had a right to assume that I was willing to and wanted to change the management and generalship of this work, and to break our pledge and contract with you as to the publication of this book.

I admit that I had no right to expect you to disclose the fruits of your labor for years to this man who gave us no pledge or guarantee of what would be done, and I want to again heartily endorse your refusal to disclose it except when published in book form under the arrangements and plans we have made, and I pledge my utmost efforts to live up to these arrangements as above set forth.

Further, Mr. Gridley, I want to assure you that in withholding your agreed overhead expense money for July until the 18th of the month, it was not done deliberately for the purpose of pinching you, after having caused you through our promises to assume burdens which you would not otherwise have assumed. I want to assure you that the letter you received from your old time Western friend, which came to your hands the day before the members of our committee waited upon you—the 17th and 18th—was not inspired by anything I wrote to that party.

I am willing to admit that headquarters has erred in giving the heirs to understand that the delay in this work was your fault, instead of telling them honestly and candidly that the delay was due to lack of money.

I admit that by the original arrangements when you came into this work for us last January, you told us that you would require $500. a month to cover rent and certain other expenses that you would necessarily have to incur to enable you to take up this work, without interfering with your present business; that we knew and understood that you would not give up that business, and that you were not to account to us in any manner for the disbursements made by you from that agreed sum. I admit that it was agreed that your name would not be used, and you would not be required to interview anyone but our representative Mr. Thomas J. Grover. That your law library was to be brought down to date by us and the necessary books obtained so that you would have them on hand for constant reference; that the outside work would be done by Mr. Grover; that when Mr. Grover retired you cheerfully assumed the generalizing of the work of which he would have taken charge; that the books, papers, records, etc., were to be paid for and secured by us, and that all you would be required to do would be to give instructions as to where to find them and what to obtain; and I admit that you have in no instance failed to do anything that you could possibly do to aid headquarters in their work, or advise with them when called upon so to do.

Since our discussion on September 28th, I am satisfied that it would be a most grievous mistake to omit to establish public opinion first and foremost, which, as you explained, was nothing more than the Rooseveltian plan, or the "Big Stick" plan of his which put a curb on the big trusts, and that it is the only method by which the "Street" has ever been made to feel that they are not supreme.

Now I ask you to reconsider your determination to withdraw from the leadership of this work, and for my part in this late unpleasantness, I apologize and pledge my loyal support to the end of this controversy, in carrying out the plans you have made, or any modified plan that you may make or think justified, under the circumstances feeling sure that you, in your judgment, having made such supreme sacrifices for this cause, could do nothing except for its betterment and success.

I am perfectly willing to call a meeting to elect a treasurer, in order, as you advise, to separate the two offices of president and treasurer, and will co-operate in the election of a party satisfactory to you, and to the Order, I will also suggest to the Order the nomination and election of various vice presidents throughout the different sections in order that their names may appear upon the stationery, and that they may be given a voice in the management of the affairs of the order, so that in future decisions will not rest with one man, or be influenced by one man.

I am willing to co-operate in having the Executive Committee direct the treasurer to pay you your fixed overhead charges on the first of each month promptly, and also all other funds which are available as fast as received, after allowing for the home office expenses, in order that this money may be used for the purposes for which it is contributed. I am willing that the treasurer shall be directed to send out itemized monthly statements to the heirs on the lines you have set forth, so that each member of the Order and Association shall know just who sends in the funds, how much, and from where the different amounts are collected—feeling sure that this gives an inspiration to each one who contributes to see that their effort—no matter how small—is appreciated, and is going toward the achievement of their desires.

I agree not to penalize or criticise the lady to whom I wrote these letters in any manner whatsoever, and acknowledge that in sending these letters to you she did so in a spirit of loyalty, honesty, and devotion to our cause, knowing and feeling that such correspondence was sowing the seeds of discontent and disruption in our Order, and I also acknowledge that a letter which she had written to the Secretary of the Order was sent to you for answer, which she took as a precedent for her action.

Trusting to receive an acceptance of this pledge and explanation I am,

Very truly yours,

. . . . . .

Now Mr. Roat, while this may seem severe to you, let me say that this was none of my seeking. I long ago asked both you and Bob to cease laying the blame of delays and other things in this cause at my door, and to these letters you neither saw fit to make any response. I think you will acknowledge that it takes a superhuman effort to overlook what you have done, and that when you stood in my office and made the statements you did you were then false in your expressed loyalty because you knew then that you had written Mrs. . . . . this letter of September 27th, and so much did your conscience hurt you, that you left

and immediately telegraphed her not to mention the receipt of your letters.

A question arises in my mind as to whether we are doing the right thing in burying this hatchet between us, because after all you must realize that you have been guilty of an attempt to sow dissension in our ranks, and you are the President of this Order, but I do feel that if the treasurership is in the hands of those who will not scruple to make known how much or how little the funds are, and who will not hesitate to grapple with the correspondence, and keep everyone posted, and in place of having this a one man matter, have everyone working and doing their part, it will soon take on a better footing, and the work will proceed more harmoniously. I am sorry to have had to speak thus plainly to you, but I cannot with an ounce of self-respect allow this unpleasantness to pass without calling you to account, if only for the sake of future peace and harmony, for should I overlook it without having your acknowledgment and future pledge, you would feel at liberty to repeat your offense, which might come at a time when it would spell entire disaster for this cause.

You are prone, as I said in the office, to treat Bob Jones—or rather I would say you are prone to curtail his ideas, and you have the idea that you must do so to all; that idea would be all right in a different business to this, but I was not given to understand that I would meet any such situation when I took up this work. It was not presented to me as a one man effort—rather the effort of thousands, with a National Committee at the head, not one man—and I want to feel for the future that the decisions rest with a body of people and not with you alone, and that there will be no more of this correspondence of which even the writer is so afraid that he would have to ask one of our number not to mention it, when in truth and in fact her pledge of devotion and faith to this work demands that she make it public to all her fellow workers.

Therefore the decision as to what future course I shall take in this matter rests upon your shoulders, and I shall await either the signing of this letter, or a reply within the next four days.

Very truly yours,

W. T. GRIDLEY.

Thomas Grover

The star witness, Roat, testified as to the arrangements made with me; that he did not make the arrangements; that Thomas Grover, Esq., made those arrangements, and reported back to the National at Wilkes-Barre.

Mr. Grover's testimony, absolutely refutes Mr. Roat's, and being the acknowledged representative of Wilkes-Barre, the committee they sent to wait upon me, and persuade me to do something for them, they are absolutely concluded by his testimony, and, therefore, any claim that I was employed, is false, for you cannot employ unless you pay some compensation; any testimony that I agreed to prepare a case for court, is false, for Mr. Grover gives the terms of my employment, and states that my reward was to be fifteen per cent of the proceeds of the sale of the book.

Mr. Grover was an attorney. Wilkes-Barre was thoroughly protected in any arrangements with me by having an attorney, and certainly no attorney is going to place himself in jeopardy by accepting such a proposition as Roat claims was made between Mr. Grover and myself. An utterly ridiculous situation; for if all I was going to give them was evidence upon which they could and would recover property, why not have made a dicker right then to deliver up to them the results of my investigation for a stipulated sum? Why all the work on a book?

THOMAS J. GROVER, was thereupon called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McARTHUR:

Q. Mr. Grover, where do you live?

A. I live in the City of Wilkes Barre, Luzerne County, Pennsylvania.

[2060] Q. What is your business?

A. I am an attorney, a lawyer.

Q. When did you arrive in Detroit?

A. Yesterday morning.

Q. Have you been in court any before today, in this court room?

A. I was outside. I have not been in the court room, no.

Q. Do you know a Mr. Robert Jones?

A. I do.

Q. And do you know a Mr. Murray Roat?

A. I do.

Q. Did you ever become acquainted with those gentlemen in connection with an alleged estate of Anneke Jans Bogardus?

A. I did.

Q. About when, Mr. Grover?

A. I believe it was during the year 1922, as near as I can recall.

Q. Will you go on and relate what the circumstances were attending that relationship?

MR. WATKINS: I object to it as incompetent, irrelevant and immaterial.

Mr. McARTHUR: If your Honor please, they have gone into that and told about their conversations with this very witness, with Mr. Roat, and also with Mr. Jones, both of them.

THE COURT: If you want to ask any impeaching questions, I will permit it. Ask them if they said something to him. Something that is relevant and material to this lawsuit, and if you can show it is to the contrary, that is the only way that that becomes admissible.

MR. McARTHUR: It is not for the purpose of [2061] impeachment, your Honor. It is just to lay the foundation for the facts in this case as it presents the defense. We are not impeaching.

THE COURT: This man is a member of this Society, as I understand it. He was consulted by them perhaps as an attorney. I don't know whether he wants to testify about that. If he does, I will hear him.

Q. Are you a descendant of this Anneke Jans Bogardus?

A. I have been told so.

Q. That is the way most of them know it.

THE COURT: I think everybody has been told that. You have no reason to believe it, as I understand.

A. Well, I have been told that by my paternal grandmother from a little boy.

THE COURT: All right, that puts you in the class then. That is all the proof, except in one case, I have had yet.

Q. In what capacity was Mr. Jones relative to the Old National as it had been called, if you know?

MR. WATKINS: I will object to the question. It does

not refer to anybody so far, that question. I do not know who you were talking about yet.

MR. McARTHUR: I asked him what his connection was, if he knew what Mr. Jones' connection was with the Old National, if he knew.

THE COURT: I will exclude that. Mr. Jones [2062] has been here and told about his connection.

Q. Did you ever go to New York with these gentlemen, Mr. Roat and Mr. Jones?

MR. WATKINS: I will object to it as incompetent, irrelevant and immaterial.

THE COURT: If he saw the defendants with them, I will admit that.

MR. McARTHUR: That is preliminary, of course.

THE COURT: I will let you answer.

A. I did not go to New York with Mr. Murray Roat, but I did go with Robert Jones.

Q. And did you see Mr. Gridley or Mrs. Wright on that occasion?

A. Yes, but there was more with me during the time that I first met Mr. Gridley and Mrs. Wright, and Robert Jones.

Q. Who went with you?

A. A man by the name of Gardner Spencer, Harvey Brewer, Robert Jones, myself and I believe there were one or two more that I can't recall their names just now. It is about six years ago and I get a little hazy on it.

Q. And did you see either of these defendants?

A. Mr. Harvey Brewer, one of the men that was with us said he was acquainted with Mr. Gridley.

MR. WATKINS: I will object to it as not being responsive to the question.

MR. McARTHUR: How can you object to that? [2063]

THE COURT: That question can only be urged by counsel who asked the question. Overruled.

A. I went to 312 W. 39th Street, where we were told by Mr. Brewer that Mr. Gridley was working, and it was a large building, I believe, a manufacturing establishment, or something like that, and we took a freight elevator and went up to either the fourth or fifth floor. When we got to the top on the 5th or 4th floor, whatever it was, I believe Mr. Brewer asked for Mr. Gridley. The elevator man did not know such a man as Mr. Gridley there, and Mr. Brewer said "Back there he stands now," pointing to Mr. Gridley. I of course did not know him at the time, never knew him before, and by that time this lady who later I learned to be Mrs. Wright came over and said, "That is not Mr. Gridley, that is Mr. Anderson." By that time Mr. Gridley came over towards us, and Mr. Brewer greeted him and Mr. Gridley. Then we walked back in his office. He had an office in one corner of the building by himself. The rest of the room was a large room, probably 40 feet by 100, maybe, or might be larger or a little smaller, but used as a store room for storing machinery, or something, as I recall it. We went in his office and these men asked me not to leave Mr. Gridley know that I was an attorney. I sat there, and I believe it was Mr. Brewer said to Mr. Gridley, "We came here in regard to the Bogardus matter." Mr. Gridley spoke up and he said, "I don't want anything to do with that. I had enough of that in my disbarment proceedings." He said, "I was not treated fairly by the Bogardus heirs at that time," and he says, "I don't [2064] feel like working for them now, and I don't want anything to do with it." We talked there probably a half hour, nothing accomplished, and we left and went back home.

I don't recall just how long it was after that, to the best of my recollection it was about two weeks, we went back again and I recall then, Bob Jones and myself, and we went in and had a talk with him again on the matter. He did not want to have anything to do with us. He did not give us any information that was any account except that he told us what had been done and so forth, but gave us no encouragement, and we left again and went home. I do not recall just how long it was, but we went back again to see him, Mr. Jones and I, and I do not recall, but I think there was a third party with us then, and I told him I left them down on the street, and I went up to Mr. Gridley and had a talk with him, and I explained to him that I was an attorney and wanted to know what he thought of this matter, and he did not give me any encouragement in the matter, but told me he would rather not have anything to do with it; that he had trouble enough with it in his disbarment proceeding. I asked him whether he thought he could be reinstated as an attorney. He said he did not know. He said he had never been served with a final order in the case, and he did not know what his standing was, whether he could be reinstated or not. [2065]

Q. And did he say anything about the cost?

A. Yes. I then took up the matter of the cost with him, and he told me it was, I suppose, one of the largest disbarment proceedings in New York City, and a great deal of testimony, and it would cost from $2000 to $2500 to have the printing done alone. We talked the matter over and he said, "Since you have been here the last time I have reconsidered the matter," and he said, "I will give you what information I have in a book form or pamphlet form." So I went back down and conveyed this message to Mr. Jones or the other man with him, and we came back to Wilkes Barre and told them, told some of the committee. They never came to me in a body. One would come in and ask me something, and another would come in and ask me, and I gave them what information I had. Then we went back the fourth time and Bob Jones then went in the office with me, and we talked the matter over with Mr. Gridley, and I believe there was somebody else along, and I can't recall, and the matter was talked over then about writing this book or putting it in pamphlet form, and Mr. Gridley agreed to do that work, and he to have 15 per cent of whatever was made, and the other 85 per cent to go to the National Committee for whatever purpose they saw fit to use it for. Then we went back again and made this report, and a short time after that — I can't give you the exact dates, but it was only about five months, [2066] as I recall, that I had anything to do with it, they sent me to Albany. Mr. Jones and Mr. Roat sent me to Albany to get certain papers that they wanted to use in connection with this matter. I went to Albany to the Secretary of State, to his office where I was informed I could get these papers. I had a list I believe of 38 or 40 different papers I was to get. I showed this to a man who was pointed out to me as Secretary of State there, and I asked him whether these papers were there in his office. He says "I cannot tell you." He says, "I have not been here long enough," but he pointed me out a lady sitting there, and he said, "She has been here 16 years. She can tell you any paper that is in this office." So I submitted the list to this lady. She read it over and said, "There are eight or ten of those papers here and no more." I said, "Will you get those papers for me if I pay you for it, certified copies?" She said, "All right." I gave her the list, and she prepared

the papers. I paid for them and brought them home with me when I came back home.

Q. Now, did you make a report to your Committee?

A. I did not make a report to the entire committee, as I recall it. There was several of them came in my office, and I told them what I had. I gave them the papers and showed them.

Q. Was Mr. Jones in any way affiliated with your office?

A. Well, they had no place for an office, and I had two rooms, and I told them they could use my outside office, but not the inner office. They could use my wait-
[2068] ing room if they wanted to do any work in there, they could, so I gave Mr. Jones a key to my outside office.

Q. And did he use that for a time?

A. He did.

Q. Was there any talk there in the presence of these parties with Mr. Gridley relative to this manufacturing business or the use of the name "Wright" or the use of the name "Anderson" or any of those things, in connection with that business or the employing of a stenographer or secretary in the clerk's office? Was there any arrangement made relative to those things?

A. What are you referring to, to my office, or in New York?

Q. Any of these meetings.

THE COURT: In New York he is talking about, these meetings with Mr. Gridley.

A. Mr. Gridley had told us, we asked him, when he spoke about writing this book, and so forth, he told us that it would be necessary to have a noiseless typewriter, because he would do this work, part of it at home to start, and he said he did not want to disturb the people there in the apartment. [2069] He could have a Noiseless Typewriter, and he says, "I will not take up the work unless you have a stenographer," and he suggested that we get Mrs. Wright because he knew her, and she could do his work better than anybody else. At first she did not want to have anything to do with it. She objected to even talking about it. Of course, they insisted on her doing the work, and finally she said she would do the work for $50 a week, and there was an agreed price there, the whole amount of overhead expense, of $500 a month. That was to include rent, Mrs. Wright's services, a typewriter and other incidental expenses, transportation, light and so forth, telephone, and whatever it might be, and this National Committee agreed to pay him that a month for overhead expenses.

Q. Was there any discussion as to whom he should deal with or his letter writing?

A. He said he would not write any letters, and he said, "I do not want my name used in any way at all in this matter, because," he said, "I am working for a large concern here." I believe it was the Rex Fire Extinguisher Company. And he says, "They do business with big institutions, railroads, and different factories," and he says, "If it became know that I was Mr. Gridley, this company would lose their credit," And he says, "I would rather not have my name" — and he said, "I do not want my name used in connection with this." And I asked him what his name was and he told me that he had been using the name "Anderson."

Q. When you say you made these several trips,
[2070] there, how many of them did you have?

A. I believe five or six.

Q. And it was at the final meeting then that this arrangement was made?

A. I believe it was the last, or the next to the last meeting.

Q. And the first two meetings he refused to have anything to do with it?

A. He said very few words. They did the talking, and I did the listening.

Q. Was there anything said in connection with any of those visits there by Mr. Gridley relative to a lawsuit?

A. No, I don't think a lawsuit was mentioned, as I recall it. If it was, it was after my time. As I recall it, the first two visits he said very little; and the next time, he told us that he had reconsidered the matter, and that what information he had he would put in a pamphlet or book and print for us.

Q. Did you understand on those visits that Trinity Church had been in possession of that property for a great many years?

A. Yes, I knew that. We had talked that over before we went to see Mr. Gridley. I believe Bob Jones had told me in my office; he said there was a lease, and that it had expired for a good many years. And I said to him, "If that is the case, and Trinity has been holding [2071] this in adverse possession, for 21 or more years, you cannot get that property." He said, "We are going to find out. That is what I am elected for; that is what I am elected for."

Q. Both Jones and Brewer knew that in their conversation with you?

A. Yes we talked that over before we went to see Mr. Gridley.

Q. What do you know relative to the promotion of the National, if anything?

A. Well, that was along in 1922, I believe. They called all of the heirs that they could get together in Wilkes Barre, and held a meeting there and formed what they called the National Committee. I believe they held it in the Y. M. C. A. on North Main Street in Wilkes-Barre.

Q. Was Mr. Gridley there?

A. No, I don't think we knew of Gridley then. I don't think I did. I might have, but I don't recall. If I did, I don't recall. But Mr. Gridley was not at that meeting.

Q. Did Mr. Gridley have any part in the forming of that Association?

A. Not to my knowledge, and I believe I would know if he did.

Q. Did Mr. Gridley, at any of these talks that you have related, in the presence of Mr. Jones ever make any statement that he would furnish evidence in this book whereby a lawsuit would succeed in recovering property in New York City?

MR. WATKINS: I object to his question as
[2072] leading.

A. He did not.

MR. McARTHUR: That is just exactly what Mr. Jones testified to. This testimony is impeaching of that.

THE COURT: Did you ask him if it was in the presence of this witness?

MR. McARTHUR: It was at one of these meetings.

THE COURT: If you wanted to ask that, you should have said, "Did you not, in the presence of Mr. Grover, say thus and so?"

MR. McARTHUR: He testified that he did say that in the presence of Mrs. Grover. Should I ask him to repeat it, before I could impeach?

THE COURT: If you are right about that—

MR. McARTHUR: I don't think there is any question about that, is there?

MR. WATKINS: I think there is a question about it.

THE COURT: You could look that up in the record.

MR. McARTHUR: I would rather call him back later, because it would take some time.

THE COURT: It should be put exactly in the language of the witness, and they should each have their attention expressly called to it.

MR. CHOLETTE: Your Honor, this question has come up before. It seems to me, where a witness testifies to a matter that is a part of the issue in the case, and testifies concerning that, and where another witness is produced to contradict that, it is not an impeachment of that witness; it is a denial of an allegation regarding a material issue. And it is not necessary, where it is [2073] brought out by the prosecution for us to ask that witness on the stand if, at such and such a place he did not make such and such a statement. It is highly proper for us to ask the witness if such a statement was made in substantially the same form. It is not for the purpose of impeachment. It is a denial of a statement which he brought in on a material issue.

THE COURT: This witness would not attempt to say that on no occasion did this witness say that in the presence of Jones, Robert Jones. This witness of course would not attempt to say that Gridley never in the presence of Jones said such a thing. But now, the question is whether or not you have paved the way for it.

MR. McARTHUR: I will ask you this:

Q. Did Mr. Gridley, in the presence of Mr. Jones and yourself, made statements relative to New York property, or what would be contained in the book relative to that, and whether they could recover New York property as a result of things in the book?

A. Oh, no, he never told us anything like that.

Q. And you, as a lawyer, understood those things, of course?

A. Yes. I didn't get any inference like that from what Mr. Gridley said. He did not lead us to believe that at all.

Q. Did you ever hear the expression, "jack-[2074] knife lawyer" used by Mr. Gridley at any time?

A. What was the expression?

Q. Did you ever hear the expression "jack-knife lawyer" used by Mr. Gridley at any time?

A. No, I never heard him use that expression.

Q. At any of these conversations?

A. No, never.

Q. When did you first meet Mr. Roat, if you recall?

A. I can't recall that. I know it was some time after I met Mr. Jones.

Q. Did he go down there at any time with you?

A. He never went with me.

Q. Did he meet with you at his store, or did you go there to his store at a time when there was a meeting?

A. There was a meeting there one Sunday, I believe, that I attended.

Q. Was Mr. Gridley present at that meeting?

A. He was not.

Q. Do you recall any subsequent meeting that you attended, and at which Mr. Roat and Mr. Gridley were there?

A. Mr. Gridley never attended any meeting in the city of Wilkes-Barre, or in that vicinity, that I ever attended.

Q. You state he had made it positive to them that there was no chance for them to recover property in New York City as a result of information he could get?

A. That question did not come up in that way. That question wasn't asked him, as I recall [2075] They didn't ask him whether they could recover the property, and he did not tell them that they could recover it.

Q. He never made any such statement?

A. No, not to me, and not to those men in my presence.

Q. There came a time, did there not, when you ceased to have anything to do with this affair or with Mr. Jones, did there not?

A. There did.

Q. Will you tell what that circumstance was?

A. Well, there was different things that led me to do that. I had studied this matter, and I believe somebody had furnished me with a New York State report wherein some case, the last case, I believe, which was tried, and it was decided, and I read it, and from the different information I got, I decided there wasn't much to this and the best thing I could do was to stop. Not only that, but when I came back from my trip to Albany and went in my office, my desk was broken, it had been pried open during my absence, and Robert Jones was the only man who had the key to my door to get in. I took the matter up with him, and I said, "Robert, you busted my desk open while I was gone." I said, "What was the object?" He said, "I wanted to get in." He didn't deny it. He owned up to it that he broke my desk open. There were several other things which led me to think it was time to get out of that organization. I wasn't in the organization, but I mean, rather, I severed my relations in every way with [2076] it. So, I told him I didn't care to have him in my outside office any longer, and he moved out.

Q. Your only immediate connection with the organization then was through Mr. Jones at that time?

A. That is so. Well, I guess the only arrangement I ever had with any of them was through Mr. Jones and Mr. Roat. I was not employed as an attorney to represent them. They did ask me to do certain things, like to go down to see Mr. Gridley, and they would pay me for that. When they asked me, when I went to Albany, they paid me for that. **But when they came in my office to ask any question, I received no compensation for that whatever, when I talked with them, I didn't.**

Q. Did Mr. Gridley say anything at any time in the presence of these men to you relative to who he was to deal with?

A. Yes. He said he wanted to deal with me.

Q. Did you have any talk with Mr. Gridley about these records at Albany?

A. Well, when I came back I reported to Mr. Gridley what I had. I stopped at his office on my road back.

Q. How does it happen that you knew about the records at Albany? How did you happen to go there?

A. There was a list given me. I don't know whether I got the list from Mr. Gridley or Mr. Jones, but the list was handed to me by somebody, of those records up at Albany. This was six years ago, and I am not just as fresh on the matter as I might be, but I am trying to tell [2077] you the best of my recollection.

MR. McARTHUR: Cross-examine.

CROSS EXAMINATION

BY MR. WATKINS:

Q. Mr. Grover, you say you were not hired as an attorney?

A. I would like to have you be specific in the matter and tell me just what you mean.

Q. Haven't you testified that you were not employed as an attorney?

A. I explained that in this way. I say, when they would hire me to go to New York and to see Mr. Gridley, they would pay me for that trip, and that was the end of my services.

Q. Well, were you being employed as an attorney?

A. From time to time.

Q. When did you first take employment as an attorney?

A. I believe in 1922, I testified, when they asked me to go with them down to see Mr. Gridley.

Q. And who paid you?

A. Either Bob Jones or Murray Roat, I can't recall which.

Q. You were not employed by any organization of these heirs?

A. No. The organization as a body never employed me. Just those men would ask me to go and do this work, either Bob Jones or Murray Roat, and they would pay me for my services.

Q. As you did something for Mr. Jones or Mr. [2078] Roat, they paid you for the service; whatever you required them to pay, they paid, is that it?

A. They did.

Q. What were these papers that you were asked to get in Albany?

A. I can't tell you, I wouldn't recall.

Q. How did you happen to go to Albany for them?

A. Because I was told by either Bob Jones or Mr. Gridley, somebody, that they were in Albany, and I was sent to Albany to get them, to the Secretary of State's office. That is why I went there; I was sent there. And as I recall it, Mr. Roat handed me a check for my expenses, and to pay for these papers, before I left.

Q. Don't you remember any of the things that you were to get in Albany?

A. No.

Q. Any of the material that was on this list?

A. No, I didn't. I have a list at home, and if I had thought I could have brought it with me, but I haven't it along.

Q. You did not bring the list with you?

A. No, I haven't the papers with me.

Q. Were they deeds, or plats or what were they? Have you any idea?

A. I cannot recall what they were. There was a list given to me, and that is all I recall about it.

Q. Well, you know what materials are ordinarily found in the Secretary of State's office, don't [2079] you?

A. I might imagine what they were, but I don't want to answer the question unless I know what they were, and I say I don't recall what they were. There was a list of them.

Q. Do you recall any of the things?

A. I don't recall the name of anything.

Q. Were you materially surprised when you found that some of the things listed were not in the Secretary of State's office?

A. Well, I could say that I was surprised in a way. I thought I would find them all there, but I didn't.

Q. Why did you think you would find them all there?

A. Because I was told that they were there, and to go there and get them. I didn't think they would send me to a place to get papers unless they were there.

Q. Well, as a lawyer sent out by a layman, didn't you have any idea when you looked at the list whether they would be in the Secretary of State's office or not?

A. No, I did not.

Q. You did not?

A. No, I did not. I will tell you what was told me by the lady in the Secretary of State's office; she said these records were kept in the City of New York for a part of the time; then they were forwarded to Albany, and they have been sent back to New York again. How would I know, under the circumstances, where they might [2080] be.

Q. Do you know ordinarily what records are kept in the Secretary of State's office in the State of Pennsylvania?

A. No. I am not familiar with it.

Q. You are not familiar with that at all?

A. No.

Q. Well, you know some records that are kept in the Secretary of State's office don't you?

A. No, I don't know of any records.

Q. You don't?

A. I would not swear that I know of any records kept in the Secretary of State's office.

Q. Did you ever incorporate a company, in your experience as an attorney?

A. Yes, I did.

Q. In connection with your incorporation of the company, do you know of any papers that are kept in the Secretary of State's office?

A. Since you mention it now, since you mention it. I would say yes.

Q. Do you own an automobile?

A. I do.

Q. Do you have a title to it?

A. Yes.

Q. Did it ever dawn on you, Mr. Grover, that perhaps the record of the title to that particular piece was kept in the Secretary of State's office?

MR. McARTHUR: Just a moment.

A. I don't think it is, in our state. [2081]

MR. McARTHUR: Just a moment. I think the District Attorney is presuming that the Pennsylvania laws are the same as in Michigan.

THE WITNESS: I can answer that for you. Just let me answer it.

MR. McARTHUR: It seems to me he ought to confine his question purely to Pennsylvania, rather than to the presumption that it is the same as Michigan.

A. I can say that in the State of Pennsylvania we have a separate branch, in Pennsylvania; it is kept in what we call the State Highway Department, automobile license division.

Q. (By Mr. Watkins): In the State of Pennsylvania, the Secretary of State has no record at all?

A. I can't say whether he has a record at all, but I know this—

Q. Don't you know, as a matter of fact, that he has?

A. No.

Q. You don't?

A. No.

Q. Did you ever have anything to do with the extradition of a man from the State of Pennsylvania?

A. I represented a man who was extradited, one time.

Q. Don't you know that the Secretary of State's office contains records relative to extradition?

[2082] A. I believe it does.

Q. So that there are some records that you know that the Secretary of State in the State of Pennsylvania keeps?

A. If I would have time to study it, I believe I could recall some of them.

Q. As a lawyer, Mr. Grover, don't you have occasion to ever write to the Secretary of State for information?

A. Yes, I do.

Q. What?

A. Yes, I do.

Q. Why do you write to him?

A. I write for information.

Q. About what?

A. Well, some time ago I wrote to him about an estate escheating, about an estate escheating proposition. I know that record is kept there.

Q. You know, as a matter of fact, that the Secretary of State has under his direction and control a great number of records in the State of Pennsylvania, don't you?

A. Oh, yes, surely he does.

Q. And when I first asked you if you knew of any record that the Secretary of State kept, and you answered "No"—

A. I answered that correctly. But since you have refreshed my memory, and I have got to thinking over the matter, I can tell you of some of those things.

Q. You know it is reasonable to think a lawyer [2083] can get a lot of records that the Secretary of State keeps, don't you?

A. Yes. But I don't know that it is reasonable to think that a man should have them on the point of his finger to answer immediately. I do the best I can, under the circumstances.

Q. When you saw this list of documents that you were supposed to get at Albany, from the Secretary of State, you went there to get them because a layman told you that is where they would be?

A. That is why I went there.

Q. And you made no study of that list to ascertain, as a lawyer, whether it was likely that the record would be with the Secretary of State in the State of Pennsylvania?

A. No, I did not. And if I had been, if there would have been three or four records there, I would have been sent any way. So that, I will explain it, now that it comes to my memory. When I left for home, I said to the lady who prepared the papers for me, "Will you give me a statement, so that I can show it to this Committee, that those are the only papers here?" She wrote out a statement, and I gave it to the Committee when I came back, that these were the only papers on record there; that letter or statement was delivered to the Committee when I came home, to Robert Jones.

Q. The only reason, Mr. Grover, as I understand you, why you were surprised that the other records on this list were not at the Secretary of State's office, and [2084] therefore which you were not able to get, was just because you were told that they were there.

A. They gave me the list, and I went. I didn't pay much attention to it. They said, "These papers are at Albany. Will you go up and get them?" I said "Yes." I took the list and went up and presented it, as I testified before.

Q. I say, you had a list of 35 or 36 records, didn't you?

A. About 38, as I recall it.

Q. 38?

A. Somewheres along there.

Q. Out of 38, you only got what?

A. Eight or ten.

Q. Eight or ten.

A. Yes.

Q. So that there were approximately 30 records on this list that you were not able to get?

A. Approximately.

Q. And the only reason you were surprised that you did not get these thirty was because somebody had told you, either Gridley or Jones or Roat, that they were there?

A. Yes. I was handed this list, and I wondered why I was handed this list, if those records were not there.

Q. It did not surprise you, in other words, as a lawyer, that the records were not there, but it was merely because you had been told by a layman that they were there?

A. Yes. I was told that they were there. Of course, it sort of surprised me, in a way, that I did [2085] not find these records when I got there. There was nothing for me to hide or shield in any way. If the records were there, I would be glad to have brought them back.

Q. There wasn't anything about those records which was mysterious to you at all, was there?

A. Positively no.

Q. When you got the eight or ten that you did get, you did not go in any disguise to get them? You didn't have to put on false whiskers and a mustache or anything, did you?

A. No.

Q. You went right up there and showed them the list, and asked for certified copies?

A. I did.

Q. And the Secretary of State's office gave you certified copies of the records they had?

A. That is right.

Q. And you paid for them and brought them back?

A. I did.

Q. Approximately when in the year 1922 did you first go to see Mr. Gridley?

A. I can't tell you. It is too long ago. In fact, I have tried to forget the matter altogether.

Q. Why?

A. Why, to me, I felt that I didn't want to be associated with it in any way any more, because I was con- [2086] vinced it was a losing proposition, and I didn't care to tinker with it.

Q. What do you mean by "a losing proposition?"

A. Well, there was no chance of recovering any property in New York, or of getting anything of the kind.

Q. So that when you first went into it, you felt that there was a chance, perhaps?

A. Mr. Jones and the men who employed me told me certain things. Of course, not knowing the facts, I was not going to tell them that they were liars. But after I investigated and studied the matter over, I was convinced that there wasn't much to it, and I didn't want to be in it no longer.

Q. Your first association with the movement was under conditions where you thought there might be a chance for these people to recover something?

A. I thought there might be. I didn't know of any adverse possession. I didn't know the facts in the case at the time.

Q. So that when you were first interested in the thing, you did feel that perhaps there was a chance to get something, is that right?

A. Well, I don't know as I felt that way. I felt that we would investigate and see what there was to it.

Q. You say that when you reached a conclusion that there wasn't any chance to get any property, you severed your connection?

A. Yes. There was nothing for me to do.

Q. So that when you reached that conclusion, you say you severed your connection?

A. Yes. [2087]

Q. So that, before that time, before the time you severed your connection, you did feel that there was a chance?

A. I didn't know. I was there to find out. And when I was convinced that there was nothing to it, I dropped out entirely. At least, that was my opinion, that there was nothing to it. I do not say now that there is not. I say that was my opinion. I formed that opinion, and I was guided by my opinion.

Q. And that was your opinion as a lawyer?

A. Yes.

Q. Not as an heir?

A. No, sir,

Q. And you reached your decision to give the thing up, based purely upon your opinion in the matter as a lawyer?

A. Yes. After I made an investigation, I couldn't see anything in it for the heirs, that is, any financial benefit to them.

Q. Didn't you figure, Mr. Grover, that out of this book that was going to be published and sold in great numbers to the public, that as an investment it would be a good thing to get in on this book publishing proposition?

A. For me to get in on it?

Q. Yes.

A. I was not to have anything out of it.

Q. You say that you felt you were a de- [2088] scendant?

A. Well, now, understand me right. This 85% was not to be divided up among the heirs—it was to be used for any purpose that they might see fit, that is, anything they might see fit to do in this matter. I didn't know what they wanted it for, but Mr. Gridley told them they could have that for their National Committee, if and when the book was published. I don't know what they would do with it.

Q. You didn't have any idea what they would do with it?

A. No.

Q. In connection with this, out of the 85 per cent, you say there was to be no division among the heirs?

A. Not that I know of, no division among the heirs?

Q. So that, as a matter of investment, you could not get anything out of it at all, as far as you knew?

A. I didn't expect anything out of it.

Q. Now, it has been testified in this case that the first trip that was made to see Mr. Gridley was approximately June or July of 1922. Would you say that was about the time you went up there?

A. I wouldn't say positively. It was some time I think in 1922, because I recall it was in the winter of 1922 and 1923 that I went to Albany. It was previous to that visit to Albany that I called on Mr. Gridley. It may have been that much time, and it may not have been. That is my best recollection.

Q. As I understand your testimony, you made [2089] a second trip within a very short time of the first?

A. I believe about two weeks, as near as I can recall.

Q. And the third within a short time of the second?

A. Yes.

Q. And the fourth within a short time of the third?

A. They were not very far apart, because they would have to be made close together, in order to get all of the trips in within the time I was connected with it.

Q. So that you think your connection with the whole thing wasn't over four or five months?

A. As I recall it, it might have been a little longer, but as I recall it, it was around about five months; I may be mistaken.

Q. Before Mr. Gridley ever came to Wilkes-Barre to attend any meeting, you had severed your connection?

A. Well, I cannot answer for Mr. Gridley, but it was the first that I knew of him being there. If he was there before, I didn't know of it.

Q. At least, you did not see Mr. Gridley or have any connection with Mr. Gridley in Wilkes-Barre?

A. Oh, no.

Q. You had severed your connection?

A. I believe if Mr. Gridley was there, it was after I was through with it entirely. I don't think he ever was there while I was in it. At least, I never saw Mr. Gridley in Wilkes-Barre in that neighborhood.

Q. Mr. Grover, do you know Mr. Keithline?

[2090] A. Samuel Keithline?

Q. Yes.

A. I do. He is a client of mine at the present time.

Q. Did you ever visit Mr. Gridley in New York with him?

A. Yes.

Q. What were the circumstances of that visit, Mr. Grover?

A. Mr. Gridley and I had a fight,—not a fist fight.

Q. Pretty near a fist fight, didn't you?

A. Well, no, I don't believe it was near a fist fight, but it was a tongue lashing.

Q. What was that fight about?

A. Well, I was under the impression that he was doing things against me, and I went down to investigate and find out, and we met there, and I accused him of different things, and he denied it. Of course, we quarreled, and I left.

Q. What did you accuse him of?

A. Well, that is when I learned that he was up there, that he came to Wilkes-Barre. I had learned then, I think, that he had come up to Wilkes-Barre. And since he had told me that this was to be done through me, I felt that he should not come up there. Then I went down to see him about this.

Q. As a matter of fact, you left this organization because you and Gridley had an argument?

A. No.

Q. What? [2091]

A. Oh, no, no. Mr. Gridley and I had an argument afterwards.

Q. You mean after you had severed your connection?

A. Yes.

Q. After you had severed your connection with the thing, why were you interested in what Mr. Gridley did?

A. Nothing more than I wanted to tell Mr. Gridley what I thought of him.

Q. What did you tell him?

A. I told him I thought he wasn't playing fair, because he had asked me, or told me, rather, that the business was to be done through me. Instead of that, he had come to Wilkes-Barre and had a conference with the heirs. I wanted an explanation. He said the heirs had invited him up and did not want me present, and he said that was why he went. Now, let me explain to you—

Q. You had lost a client, hadn't you?

A. What client?

Q. I say, you had lost a client?

A. Whom do you mean by a client that I lost?

Q. Well, in connection with this matter?

A. Oh, I don't know that I had lost a client.

Q. You complained to Mr. Gridley because he had prom-

ised to do business through you, and he was not doing it through you, isn't that it?

A. I lost that client in this way, that I ordered him out of my office. It was me that got rid of the client; the client didn't get rid of me.

Q. Why did you go to Mr. Gridley and com-
[2092] plain about him doing business through somebody else than you, after he had promised to do business with you?

A. I have already stated that. I wanted to tell him just what I thought about the matter, that is all. I was through with him, and I went down, as he will say himself, and I went in and I explained to him what my mission was.

Q. What did you say?

A. I asked him why he came up there to see the heirs, after he had promised me or asked me to do the business through me, and not through any one else. And we had quite a talk. He said the heirs had asked him to come up there and did not want me present at the meeting. And I told him, "All right, if that is your way of feeling about it, all well and good." I was through with them, anyway. One thing led to another there, and we quarreled, and I left.

Q. There is nothing that you have said so far that would cause any quarrel, was there?

A. Nothing any more than we called one another names; that is about all.

Q. So that you were mad at Gridley and Gridley was mad at you?

A. And we have been until I got a telephone message the night of the 19th, I believe, of January, from Mrs. Wright, asking me if I would come on and testify for them. I have not spoken to him from that [2093] day until yesterday, or until I spoke to her over the telephone. She asked me if I would come on and testify for them. I said, "Mrs. Wright, I am surprised that you ask me to testify for you, after we had that fight in the office." She said, "Mr. Grover,"—she was almost crying, —she said, "I rely on what you say." Now, I am not tooting my own horn; I am telling you what she said. She said, "Mr. Grover, I know you are an honest man, and we can depend upon what you will say as true." I said, "Mrs. Wright, if I come, I will tell nothing but the truth, as I recall it." She said, "Will you come?" And I said, "I will come." Now, I am no friend of theirs.

Q. And you are here?

A. I am here for nothing more than to see that what was said between Mr. Gridley and I is told in the correct way. That is the only purpose I am here for.

Q. So that, prior to Mr. Gridley's coming to Wilkes-Barre, you are sure you were out of the organization?

A. Yes. I will tell you when I got out. When I brought those papers back from New York, I reported to these people—there was several of them in my office, I don't recall just how many were in my office — and I told them about these records, how many I had got, and I submitted the records to them. And I also took up the matter and I told them that I did not believe there was any use in pursuing this matter any further, that they could [2094] never get any money out of it, and there was nothing to it, and they should drop it. They were dissatisfied with my report. From what I learned from them, they wanted me to tell them something that would tickle their ear, and I was not telling them anything but what I believed to be true. I told them, "If that don't suit you, I am through." I forget what happened there. Anyhow, there was some more talk, and we adjourned and went home. The next day Bob Jones came to me, and I told him to take his stuff and move out, I was through with him.

Q. The thing that they wanted to hear, was that they wanted to be urged on to the belief that they were going to get some money?

A. That was the opinion I got from that committee. And, they didn't get it.

Q. And they stuck with you as long as you were telling them that?

A. No, I didn't tell them that.

Q. As long as you did not tell them that they would not get any money, you played together?

A. We didn't play. They employed me, and I worked with them. I didn't play. I worked for them. And I was an investigator. After I made a thorough investigation, I submitted to them what I knew, and that was the end of it.

Q. After you had submitted that, then the fight with Mr. Gridley came?

A. Then I learned that Mr. Gridley had come out to meet with them before. No, he came up after that, as I recall. It is so connected as to time, [2095] that it is hard to fix those dates. But it was around that time. Then I went down to see Mr. Gridley. It was six years ago, and I cannot fix those dates just to the day.

Q. But you know that after you had gotten out, you did have this argument with Mr. Gridley in the office. And don't you know subsequent to that time, after you had been to New York, didn't you write Mr. Gridley a letter and tell him what you thought about it?

A. I never recall writing Mr. Gridley any letter at all. If I did, I don't recall it. I don't recall writing him a letter at all. As I recall it, there was no correspondence of any kind between Mr. Gridley and me.

Q. (By Mr. Watkins): How did you learn,
[2096] Mr. Grover, that Mr. Gridley had been in Wilkes-Barre?

A. I believe that Mr. Keithline told me, Samuel Keithline, the man you have just mentioned.

Q. The same man with whom you went to New York?

A. As I recall it now, I believe he is the man.

Q. What was it you said when you went to Mr. Gridley's office? You had heard of certain things he had said about you that you did not like?

A. No.

Q. What were those things?

A. That Mr. Gridley said about me? No, you can't find that in my testimony. I did not say any such stuff.

Q. Didn't you so testify?

A. No, I said Mr. Gridley had asked me that this business be done through me and nobody else, and I had learned that he had been to this meeting. I did not say that Mr. Gridley had said anything about me. If I did, I misspoke, because Mr. Gridley never did say anything about me, not that I know of.

Q. But you went to New York merely because you had learned that Mr. Gridley had been to Wilkes-Barre to this meeting?

A. Yes.

MR. WATKINS: I think that is all for the time being. You are going to be here for the rest of the day, are you?

THE WITNESS: Well, I made arrangements to go home at 2:30. I live quite a ways.

MR. WATKINS: There are one or two little [2097] matters that I want to check on, your Honor. I

would like to have him here the rest of the day if I could.

THE COURT: Can't you do it at recess?

MR. WATKINS: I will try to.

THE COURT: Then we will take a recess at this time.

(Whereupon a short recess was taken.)

MR. WATKINS: Your Honor, I will call Mr. Grover before the noon recess, if I want him.

THE COURT: He will be excused then after the noon recess. Unless you make some announcement to me, he may go.

MR. WATKINS: Yes.

MR. McARTHUR: Your Honor, I have a few more questions.

THE COURT: All right.

RE-DIRECT EXAMINATION

BY MR. McARTHUR:

Q. Mr. Grover, you live in Pennsylvania?

A. I do.

Q. And how far is it from where you live to New York City?

A. I believe 176 miles.

Q. Are you acquainted with all the laws of the State of New York relative to the filing of papers in New York, from the time of its entrance in the Union?

A. No, I am not familiar with New York state law.

Q. In your own practice in your own state, you know that those laws have changed from time to time?

[2098] A. Yes.

Q. As to where a particular paper would be on record a hundred years ago in New York state, you do not pretend to know what the laws were at that time?

A. No, a man has a hard matter in learning to know the law of his own state. At least I have found it so.

Q. There does not anybody know those in Michigan. Now you stated on cross-examination that you felt that there was no chance to recover any property in New York state. Where did you get that notion that there was any effort being made to recover property?

A. Well, there was not any effort made.

Q. Well, any thought of it. I will put it that way.

A. Well, I got this from Jones and these men on this committee. They told me we were investigating to find out. We had not formed any opinion, at least I had not. I was to form an opinion and then give them my opinion, after my investigation, which I did after I made a thorough investigation. I was satisfied that there could be nothing in this matter that would benefit these heirs financially, and I so informed them.

Q. And in the course of the investigation, one of those things was to visit Mr. Gridley and find out what he knew?

A. Visit Mr. Gridley and get what he knew about the matter and read up different articles that were furnished me and that state report in particular where the Supreme Court, I believe it was, of the State of New York had decided against them. [2099]

Q. On these several visits to New York, whether or not Mr. Jones accompanied you?

A. He did.

Q. He heard the conversation that you had with Mr. Gridley relative to these things?

A. He did, all but one trip, the trip I went to Albany. I called on Mr. Gridley. I was alone then.

MR. WATKINS: I submit he has already testified that on one trip Mr. Jones and the other man with him stayed downstairs and he went up in the office alone.

A. That is right.

THE COURT: On the last trip. That is the danger of your leading questions. The witness may not intentionally, but might answer a question that would not fit at all.

Q. (By Mr. McArthur): Will you state that on the first two occasions Mr. Jones was with you?

A. Mr. Jones was with me, yes.

Q. But all during the time that you were visiting Mr. Gridley?

A. No, as I recall, there was two trips that I made in the office that he was not along.

Q. On the first two occasions?

A. Yes.

Q. Then after you had made this investigation, you had nothing to do with the publishing of a book, did you?

A. No, I had nothing to do with that whatever.

Q. You say that 85 per cent of it, as was sug-

[2100] gested, was to go to the National and to be used as they saw fit?

A. Yes, it was to be theirs, I presume, to use as they saw fit. It was to be held for the National Committee to be used for the heirs. Of course, anything they wanted to do.

Q. As you understood that arrangement, that was all up to the National?

A. That was up to the National, yes.

Q. And if they wanted to build a monument, they could use it for that purpose, or any other old purpose?

A. I suppose they could. I do not know what they could use it for, but it was to be theirs to use as they saw fit. At least Mr. Gridley did not claim any of the 85 per cent. What he wanted was 15 per cent for his services.

Q. Now you say that they were ordered out, or did you have any reference to Mr. Gridley when you spoke about that, in reference to ordering somebody out?

A. No, Mr. Gridley was not connected with me at Wilkes-Barre.

Q. Who did you mean?

A. I meant what we call the National Committee. In other words, Bob Jones used my outside office. He had his typewriter there, and I had quite a large desk there that he piled papers in. He had letters and so forth, whatever he had in that desk, and I told him to take his papers and typewriter and move out.

Q. You said, "they?"

A. I referred to the National Committee of course. They called that their office. I did it to [2101] befriend them. They paid me no rent whatever. I give it to them. In other words, it was a poor organization, and I felt that I would help them all I could.

MR. McARTHUR: That is all.

RECROSS EXAMINATION

BY MR. WATKINS:

Q. Mr. Grover, you say that the National was to have this 85 per cent to do with what they wanted. Was there any discussion as to what they would do with it?

A. No, not that I know of.

Q. You never heard any discussion at any time as to what they would do with the 85 per cent?

A. No, as I understood it from their conversation, it was to be turned over to them the same as the subscriptions; that as different heirs would pay in money to them, it would go in the National treasury and this was to go in the National treasury. I had no way of knowing what they would use it for. I had no way of knowing.

Q. You did testify it was not to be divided among the heirs at all?

A. That is it. I never understood it was to go to the heirs.

Q. And you never heard any discussion as to what was to be done with it any way?

A. Not to my recollection, no.

MR. McARTHUR: Except that they could [2102] use it.

A. It was to be turned over to the National.

MR. McARTHUR: If they wanted to distribute it among the heirs, it was up to the National.

A. As far as I knew.

Q. (By Mr. Watkins): I will show you Government's Exhibit 64 and ask you if you ever saw that communication before?

A. I never recall seeing that paper. I do not recall ever seeing it, rather. I may have seen it, but if I did, I did not recall.

Q. You do not remember?

A. I do not remember; if somebody had presented that paper to me, and you know who it is, if you refresh my memory, if I know, I will tell you.

Q. Well, it is signed by J. S. Halstead of Oakland, California. Did you ever hear such a name?

A. I have heard of that gentleman, but I never got any mail from him that I know of.

Q. You do not remember any communication ever coming to you?

A. No. If there was ever anything like that came to my office, it would have been turned over to Robert Jones. He may have gotten my name through acting as attorney in certain matters with these heirs, and he may have forwarded me a paper like that. I would not say that he did not. If he did, I do not recall, and if he did, I turned it over to Mr. Jones, because anything that would come there, I would give to Mr. Jones.

Q. If Mr. Jones did testify it came to you and [2103] was turned over to him, you would think that was an honest report of how it was handled?

A. I would not dispute it, for I would not say something that I do not know.

Q. When you had this discussion with Mr. Gridley as to publishing this pamphlet or book which would give what he knew about this matter — that is what I understand you to say?

A. Yes, sir.

Q. Was there anything discussed as to how long it would take or how much it would cost?

A. No, I do not believe that was ever discussed. This started, the book proposition was talked over very little while I was in there. I suppose that happened after I left, without a doubt. There was very little said about the book.

Q. Very little if anything said about the book when you were connected with it?

A. It was mentioned but it was not talked extensively.

Q. And there was not any discussion at all as to how long it would take or how much it would cost for Mr. Gridley to do the work or anything of that sort?

A. Nothing more than I think he led us to believe it would take some time, because it was a large piece of work to be performed, and it would take some time. He did not say just how long.

THE COURT: Did he say whether or not he had any material already on hand to go into the book as a [2104] result of his previous experience?

A. I believe he had. I do not know whether he told us he had material, but that matter was talked over, but I do not recall whether he said that he had material at that time for the book or not. But I remember, what I got from the conversation, he knew quite a bit about this matter, and I felt myself that he was able to write a book from what he knew.

Q. (By Mr. Watkins): You knew that he was a disbarred attorney?

A. I did. I took that matter up with him about being disbarred.

Q. Did you discuss it with him?

A. I did.

Q. What did he say?

A. I have already testified about that. I asked him if he thought he could be reinstated. He said, "I do not know, Mr. Grover. It has been some time and I have never been served with the final order of the Court, and I do not know just the status of the case." Then that is where it came in about the $2000, the $2500; that it was a large disbarment proceeding and it might cost from $2000 to $2500 to print the matter alone.

Q. Did you discuss the reasons for the disbarment with him?

A. No, I do not know as I did.

Q. Do you know at this time why he was disbarred?

A. No, I could not tell you. It was on account of this case.

Q. Some angle or other?

A. The Association with this case. [2105]

Q. Did you ever read his disbarment proceedings?

A. I read part of it. I read some of the testimony that was taken. That was all.

Q. Where did you read it?

A. He gave it to me and I read it.

Q. And from that testimony you learned that Mr. Gridley had been associated with this thing before?

A. Yes, sir.

Q. And did you gather from what you read as to how long he had been so connected with it?

A. No, I do not recall that I did, but some time. I could not say how long.

Q. You knew that for some years back he had been connected with the movement in one capacity or another?

A. Yes.

MR. WATKINS: I think that is all.

MR. McARTHUR: Are you through with the witness?

MR. WATKINS: Yes, we are through with him.

THE COURT: The witness is excused.

Robert Jones

Secretary of the National Wilkes-Barre Organization, wrote quite a few letters before he came in contact with me, indicating that he had attorney connections. According to this letter written August 8th, 22, he had placed his affairs in the hands of an attorney, and was awaiting some decision.

Evidently the attorney made a decision, October 12, 22, for he says he had him at Wilkes-Barre and held him over so that he could go over the papers with "our lawyer." Two lawyers, and they both are sure, (sure mind) we have a good clean case, and are going to fight it through to the finish; that they are going to take the case out of N. Y.

Question, why were they coming to me, a disbarred lawyer, if it was a suit they wanted, when they had attor-

neys who thought they had a good, clean case, and all ready to proceed?

Following these letters which ante-date all connections with me, before presenting the witness Jones' testimony, will give letters written by him, covering the period of my connection with the National, in order that you may determine, whether he told the truth in his testimony; for you have in these letters his statements before he came in contact with any reasons, or circumstances which would swerve him, or induce him to manufacture a different story.

It is well to note Jones letter of October 3rd, 1923.

Bear in mind that Roat and Jones testified that the visit September 28th, 1923, was for the purpose of finding out what had been done, and discovering I was preparing to issue a book, Roat withdrew.

This letter of October 3rd, five days after the visit, would denote they were waiting to hear from me.

Then note the postscript. Would this give any indication whatsoever that they had withdrawn, or does it not rather indicate they were waiting on me, which was the truth?

The result of this inquiry from Jones was the letter "Gridley to Roat," given in the previous pages, and telling them the provisions upon which I would continue relations with them.

To this letter I received no answer. On October 10th, 1923, I received the notice of the meeting to be held October 13th.

This meeting was held at midnight, it was reported to me, and the "Gridley to Roat" letter read and discussed.

As a wonderful example of character take this man's letter of February 6th, 1928; you have him coming to Detroit to testify before the Grand Jury, to secure an indictment, against me, for, according to his testimony, having promised to put this case in court. Before leaving Detroit, he meets up with the President of the organization back of this prosecution of me, and reports that they have a new way of putting this matter in court, and it looks mighty good to him.

This organization is made up of witnesses the government used against me—Ennest, president; Price, treasurer; Drew, Turner, Page, Bellinger, etc.

Did this man Jones go back to the prosecuting attorney and report this new move, as he calls it, which had already taken in $28,000.

Now read his testimony.

Do you believe this man was schooled; that his testimony was manufactured?

If you will analyze his testimony carefully, you will see that he could not tell the same story twice alike.

145

ROBERT JONES was thereupon called as a witness on behalf of the Government, and having been [146] first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WATKINS:

Q. What is your full name?
A. Robert Jones.
Q. Mr. Jones, your home is where?
A. Wilkes Barre, Pennsylvania.
Q. How long have you lived in Wilkes Barre?
A. Forty-four years.
Q. How long?
A. Forty-four years.
Q. Practically your entire life?
A. Yes, sir.
Q. I will ask you whether or not you claim to be an heir of Anneke Jans Bogardus?
A. No, not I, my wife.
Q. Did you ever have any connection at any time with any Society whose membership was composed of supposed heirs of Anneke Jans Bogardus?
A. Yes, sir.
Q. When did you become a member of such a Society?
A. In December 8th, 1922.
Q. Now, Mr. Jones, you are the Mr. Jones referred to in the testimony of Mr. Roat, is that right?
A. Yes, sir. [147]
Q. Is it true or is is not true that you were at least some time secretary of the National Organization with headquarters in Wilkes-Barre?
A. Yes, sir.
Q. I will ask you whether or not you have ever met Willis T. Gridley?
A. Yes, sir.
Q. I will ask you whether or not you ever met Gladys Wright?
A. Yes, sir.
Q. When, if you know, did you first meet Willis T. Gridley?
A. Early in the year of '22.
Q. 1922?
A. Yes, sir.
THE COURT: You mean '22 or '23?
A. '22.
Q. You became you say a member of this Society in December of 1922?
A. December, 1922, yes, sir.
Q. And had you met Mr. Gridley some 11 months prior to that time?
A. Some time before that, half a dozen months or so.
Q. And under what circumstances did you first meet him?
A. Went to see him about handling this case.
Q. When you say you went to see him, you went where?
A. To New York City.
Q. And where did you locate him?
A. 312 West 39th Street, New York. [148]
Q. Now, will you just explain how you got in touch with him?
A. Well, there were at least two others with me.
Q. Who were they, if you remember?
A. Mr. Rhines and a gentleman by the name of Mr. Brewer from away down state. I forgot the name of the town he lived in. And he was the man that knew Mr. Gridley, and I—and he says he knew where he was, so we went to the elevator, and inquired if there was a Mr. Gridley from a colored man in the elevator, and he says there was no such man there. Mr. Brewer says, "Oh, yes, he is on the 5th floor, a fire extinguisher plant." He says, Oh, you mean Mr. Anderson?" And Brewer said, "Yes, that is the fellow." So he took us up in the elevator and we had to knock on the door to unlock it to get in. When we went in, Mr. Brewer said "How do you do, Mr. Gridley?" He said, "You are mistaken, young man, I am Mr. Anderson." Then after we had told him what business we came on, he took us into his office.
Q. Now, you say you had to rap on the doors to get the doors unlocked. What doors do you mean?
A. The elevator doors, big tin doors.

Dr. Aug 8, 22 72

Cash Cr.

S. A. Reel Dear Friend
Please me [illegible] I will be home but I am
tired of self you are that well your little
[illegible] Allong nine thirty that
night left Allong 9.30 Sat night get home
8 P.M. Sunday night. Turns all late on account
of strike. Just we done every thing up here. Pattie
took the case and is going to go over the whole
thing and said he did not think he could get it
ready for court before the first of the year, as we
were a little to late for fall term, as it would
to him from 30 to 60 days to close the case up
but if he could do better he said he would he
does not want a cent until he is sure he can
make a clear case out of it. and then all he
wants is his expenses to N.Y. and so forth to
file it. and then in case we win he wants
a per cents of which he said he will name as
soon as he is ready for us to sign up. Sounds
Pretty good Sam what do you say. I think I
will be in Schoffertown next Sunday by Auto If
so will wire you. if you can be there we'll
be glad to meet you. We are going in regards to
forming our family tree. we want to finish that
now so will wire you when I am ready
to go I hope you got home safe but I bet
you were tired. well I think of us no sleep
first night again just what little we got on train
and in the depot and not Sat night again. and got
to bed for the first 12 o'clock Sunday night!
tired out of neck I am sure you think of me
hoping to hear from you soon. well I
will close the end of week for a speedy and successful
trial in court I remain as ever yours Truly Bob Jones

Wilkes Barre Pa Oct 12, 22

Mr. Newell.

Dear Friend

A few lines to let you know that the Lawyer you heard speak at our meeting here just left for home. But I held him over here for another day so he could go over our papers with our lawyer and they both are sure with out any doubt that we have a good clean case. and are going to fight it through to a finish. we are going to take our case out of N.Y. State so we can get a fair and square deal We are going to try and take it to Washington D.C. to the United States Supreme Court. I thought it was my duty to tell you this and will keep you posted of every move we make and will close hoping to hear from you saying you arrived home safe and begging to remain your True and Loyal Friend for a fair and square deal for one and all

Mr Robert Jones
52 N. Main St
Wilkes Barre
Pa

Plate Fifty-seven

Plate Fifty-eight

Dear Friend

WILKES-BARRE, PA., July 6 1923

I received your letters and also the Maps. Now Roat thinks that we ought to have a copy of each of the Maps and Individuals. So you keep the best ones and send me the others. that is one of each. Now let me know shall I send those back and you send me the others or what. Now I have the Pictures of the Brass Plate in the bank in Albany and I have 51 typed copys of the Dutch Grants. they are sending them to us Pretty fast. As soon as I check them up I will express them to you I will see Roat about check. Now let me know about those Photos that I left with. Roat want to know if we cant have one of each and you one of each. Let me hear from you

JUL 7 - 1923

My Laws will be ready next week

Plate Fifty-eight-A

the Proof will be ready Monday July 9. I am getting our letter heads changed. Hope you are all in good health.

Yours Faithfully

Bob.

Plate Fifty-nine

WILKES-BARRE, PA., July 10, 23. 192

Dear Friends :

Yours of the 9th at hand. If you think it is all right to keep the photographs all well and good, but if at any time you need them let me know and I will send them to you at once.

Don't worry about your check I have settled that and you will receive it at once, and also the certified copies from the State Secretary that I am expressing today.

Yours very truly,
Robert [illegible]
Sec'y [illegible] 442,
[illegible]ne, Pa.

R.J./CMD.

G. M. ROAT, Pres. and Treas.
Kingston, Pa.
ROBERT JONES, Secy.
Wilkes-Barre, Pa.
THOMAS ROWLANDS, Rec. Secy.
Plymouth, Pa.
L. C. TEFFT, Hist. and Geneologist
Leslie, Mich.

L. D. DOWNS
Forty Fort, Pa.

WILLIAM RHINES
Ashley, Pa.

E. D. GRISWOLD
Seattle, Wash.
S. A. BOOTH
Lancaster, Pa.
JOSEPH PYSHER
Bangor, Pa.
WALTER BRITTINGHAM
West Chester, Pa.

HEADQUARTERS
— OF —

ORDER OF ADVOCATES OF JUSTICE

FOR THE DESCENDENTS
— OF —
ANNEKE JANS BOGARDUS

E/12

WILKES-BARRE, PA., July 24, 1923.

Dear Friends:

This will be a report of the week of July 23.

Mr. Roat and I have just returned from New York after having a conference with our New York representative. We went down with the intention of having a thorough understanding of why there is so much delay. After going over the matter with Mr. G. of New York and being shown some of the work which he has already completed we were satisfied that we must have a little more patience. We are more encouraged now after seeing what he has already completed and what he has yet to do than we ever were before and we are positive that if the heirs would stand behind us financially that we are bound to go through with this matter successfully.

We are preparing a circular to send out to the field workers and we expect every heir to get their shoulders to the wheel and back up this matter financially as our treasury is in a very bad condition. We are now at the most critical point in this matter so let everyone take off their coat and get into the fight and take this matter to heart.

You will hear from us a little later on.

Yours very truly,
Robert Jones
Secty, box 442,
Wilkes-Barre, Pa.

RJ/CMD

P.S. Would advise you to get the Sunday New York American of Sunday July 22, and you will see a Supreme Court Judge of New York State is working on the very same method as we are in regard to our work in this matter.

Plate Sixty-one

WILKES-BARRE, PA., Aug 3 1928

Dear Friend

Here is a letter from Grover sneaking Friend Keithline. He is the fellow that was with Grover at your office. He says in his letter I have Promised the People that this case was nearly ready for court. He is a liar I never said so nor he can't Prove. so it ain't worrying me I did tell the People that the Plaintiffs were near ready, and it depended upon the way the financed us to how soon we could have same. We are going to address the Phila People Boat or I within the next two weeks and we will settle Grover and his bunch

Plate Sixty-one-A

there as I did in Mich last Sunday
We are awfull busy and got things
humming up in good shape again
and we mean to go at it now and
fight like H—.

Bob.

Plate Sixty-two

8/7/1923 X

Mrs. H.G.Lutz, £1810

Dear Madam:

I received your letter of the 1st and am sending you a letter which I wish you would write to Mr. Keithline if it meets with your approval - just lets see what he is going to say for himself. Of course you know he is the man who went down to N. Y. with Grover to see Mr G...and induce him to stop working on this with us, and threatened if he did not quit what he would do with him. They are making very little headway, but I suppose with them every little counts.

I have just returned from a trip to Michigan to address a State wide meeting there. They are some 1800 people attended, and they had some rousing meeting. I wish I could impress upon you all what a difference the social features make in this work. I know some of you think it makes no difference, and that your people would not care for it - but anything deserves a try -and a little ice cream and cake has a powefful influence on the stomach - and mind. These people are going to have another meeting at the end of this month, and Mr G... has consented to go out there and address them (dont fail to tell them about these meetings, for when they see the interest multiplying out there they will do less grumbling to you, and will bring more out to that meeting you are going to attend in Phila.)

Now Mrs. Lutz, you know that since Mr G... came into this work our plans have had to be changed, for we have come to an understanding of things we never thought of before or knew of. The principal one of these is the value of an organization back of this work - first to get up the books containing the proofs so that we will have the truth about this in written form, showing ~~thizzhapter~~ the unwritten chapter in the history of New York; that then the association in each State will have the opportunity of selecting the ablest lawyer from that state to attend a convention and map out future plans, selecting some one who has a state wide reputation and whom each association will back and stick to, and we will also by this means be in a position where if anything happens to one we will have plenty of others to step into his shoes.

Now Mr. G.. is going to get up a letter or statement covering this and the plans we must expect to follow, so that there will be no misunderstanding. I hope you will try to be patient a little longer, for he is very busy. He has one man working, and as soon as finances permit he has arranged for another man - for you know this is a pretty big job for one man. He has many millions of words to read and consider and re-consider, and these things cannot be done in a minute. You know on a job of this kind if the Government were handling it they would have a dozen or two dozen people working in it, while we have got but the one to depend upon.

Now about these people who want to put the money in here to finance this as a loan - dont you think the best thing for you to do is to write to Mr G... explaining this, just send your letter to P.O. Box 71, Times Square Station, and dont put any name on the envelope and dont sign your name to the letter, except by initials.

Yours Truly Robert Jones, Secty

When you write Mr G. in regards to these People wanting to finance this matter Kindly send me a copy of the letter he sends you in regards to this.

Plate Sixty-three

Dear Fred WILKES-BARRE, PA., Aug 24 1923

Here are two letter and I wish you would send me the Answers back at once so as we can get those Rifle lined up. Also answer the ones I have sent you as you have a few that I have not got lined as yet.

Yours Bob.

Have send answers back as soon possible. I was in N.Y. yesterday my wife and I. and was up to 310 W. 38 about a dozen times looking for you. but could not find Your

S.A. Booth,
524 South Plum Street,
Lancaster, Pa.

Dear Sir:

Yours of the 26th at hand. Mr. Roat told some of the news of the meeting of the 25th and seems to be somewhat discouraged.

In regard to the propostion of Mrs. Lutz we do not care to tie ourselves up with loans. The proposition that you spoke of about two hundred heirs paying $25.00 a piece is the best idea. I will take this matter up with Mr. Roat again.

Mr. Roat don't seem to care very much about Gridley's talk, he says he thought he could much better himself. I wish you would send me a copy of Gridley's speach. I am sorry that you cannot be with me in Connecticut on the 4th.

I am glad that Gridley's talk took affect on the crowd.

You say that Spencer got $2.50 off each one of your crowd two weeks ago. Now Sam will you please get the names and addresses of each one that paid him $2.50 at this particular time and have them sign their names to this and send it to me at once. Get busy and do this right away and if he has really got this money I am going to call him in. Now do this for me at once as I will be looking for it.

Hoping that you can get it to me by Saturday, I am

Very truly yours,
Robert Jones
Secty, box 442,
Wilkes-Barre, Pa.

RJ:CMD

Plate Sixty-five

G. M. ROAT, Pres. and Treas.
Kingston, Pa.
ROBERT JONES, Secy.
Wilkes-Barre, Pa.
THOMAS ROWLANDS, Rec. Secy.
Plymouth, Pa.
L. C. TEFFT, Hist. and Genealogist
Leslie, Mich.

L. D. DOWNS
Forty Fort, Pa.

WILLIAM RHINES
Ashley, Pa.

E. D. GRISWOLD
Seattle, Wash.
S. A. BOOTH
Lancaster, Pa.
JOSEPH PYSHER
Bangor, Pa.
WALTER BRITTINGHAM
West Chester, Pa.

HEADQUARTERS
— OF —
ORDER OF ADVOCATES OF JUSTICE
FOR THE DESCENDENTS
— OF —
ANNEKE JANS BOGARDUS

WILKES-BARRE, PA., August 30, 192~~7~~.

Hannah G. Lutz,
343 Fountain Street,
Rox, Philedelphia, Pa.

Dear Madam:

Yours of the 28th at hand, but I am somewhat disappointed as Mr. Roat also told me that he did not care much for Mr. Gridley's talk. I Have received reports from people that ~~we~~ w ere with Mr. Gridley after the meeting and they seemed to be very much satisfied, however, I am going to send your letter to Mr. Gridley to see for himself and I will send you his answer.

Yours very truly,
Robert Jones
Secty, box 442,
Wilkes-Barre, Pa.

RJ:CMD

Plate Sixty-six

G. M. ROAT, Pres. and Treas.
Kingston, Pa.
ROBERT JONES, Secy.
Wilkes-Barre, Pa.
THOMAS ROWLANDS, Rec. Secy.
Plymouth, Pa.
L. O. TEFFT, Hist. and Geneologist
Leslie, Mich.

L. D. DOWNS
Forty Fort, Pa.

WILLIAM RHINES
Ashley, Pa.

E. D. GRISWOLD
Seattle, Wash.
S. A. BOOTH
Lancaster, Pa.
JOSEPH PYSHER
Bangor, Pa.
WALTER BRITTINGHAM
West Chester, Pa.

HEADQUARTERS
— OF —
ORDER OF ADVOCATES OF JUSTICE
FOR THE DESCENDENTS
— OF —
ANNEKE JANS BOGARDUS

WILKES-BARRE, PA., October 3, 1923.

Dear Friend:

As we have not heard from you since we were with you last Friday, Mr. Roat and also some of the other Committee Men have been into the office and asked me if I heard from you yet, and if you can remember when we left you Last Friday you said that you would think the matter over, and would write us within a few days, so I am writing this to ask you to let me have your reply so that I can let Mr. Roat and the rest of the boys know what your reply is.

Hoping that this will find you both in the best of health as I am at present, and that you will let me hear from you immediately,, I beg to remain as ever

Your faithful friend,

Bob.

P.S. Kindly send me an answer to the two letters that I sent you, one for Mr. Griswold, and the other from an attorney.

Plate Sixty-seven

WILKES-BARRE, PA., October 10, 1923.

Dear Friend:

Since Mr. Roat has all ready written to you and told you that we have called a National Committee meeting of all the National Officers to meet Saturday evening, October 13, 1923 at the office in Miners Bank Building, Room 1218, and as he has forgotten to tell you in his letter the time and place of this meeting I am writting you this so that you will know just what time we will meet, also notify you that each one of the National officers have requested me to notify you that your presence is requested at this meeting, so that they will be able to know just what the trouble is.

Hoping to hear from you soon, and also see you Saturday evening. If you will let me know what time you will arrive I will be at the station to meet you.

As ever your faithful friend,

Bob.

Secty, box 442, W.B. Pa.

RJ:CMD

Plate Sixty-eight

F. G. ROTH

AUTO REPAIR SHOP

Bob Jones — 52 NORTH MAIN STREET

Wilkes-Barre, Pa., Feb 6 1928

Sam Roth

Dear Friend Sam. I have just received a little news the first news I have had since we disbanded here. So I thought it was no more than right for me to let you know of it. Murray Roat. and I were Subpenaed to the U.S. Court of Detroit Mich. as witnesses to appear as to Gridley. the Heirs of Mich have called him into Court. I dont know just what will breme of it but we were told we would be called back about March or April for the trial. It seems to me Sam that Gridley will surley have to show our case or else answer to the courts. At any rate Sam it is about time that he has shown us something in Place of Promises. I dont know just how you feel in this matter Sam now but I have still got as much faith as ever. There is lots I found out at

Plate Sixty-eight-A

Detroit I would like to tell you about they
is a wonderful bunch of theirs up in Mich
and they have a new way to bring this case
to court they tell me and it surly looks
mighty good to me. The President of this court
up there tells me that they alone in Detroit
gave Indiley $28.000 in the last 2 years. they
have already put that much in this new mine
they are making. Well anything new I hear
I will write you and let you know of it
How are you and Mrs Booth getting along
I often think of you I hope you are both
in good health as we are here. They tell
me up in Mich that Indiley has gotten over
two Hundred Thousand dollars from them since
we stop paying him of course I don't know this
to be true Sam its only what they tell me
you know they stretch things alot always. but
he surly got a nice lot of money for nothing
Well I will say good night for the
Present and hope to hear from you soon
and hear that you are both in good health
and beg to always remain as ever your
Faithfull Friend Bob Jones
52 N. Main St
Wilkes Barre Pa.

Q. So that you could not get off the elevator onto the fifth floor without getting the doors unlocked?

A. Could not, no, sir.

Q. Now, is the man that you saw there who said his name was Anderson, the gentleman who is standing here in the court room?

A. Yes, sir. [149]

Q. I will ask you whether or not when you went there on that day you saw Mrs. Gladys Wright?

A. Yes, sir.

Q. She was there with him, was she?

A. Yes, sir.

Q. Now, what was the nature of the conversation that you say that you and Rhines and Brewer had with Mr. Gridley on that day.

A. We received letters from Mr. Griswold of Seattle, Washington, telling us he is the only man who can handle this case for us, and we tried to locate him to take hold of the case, so when we were talking to Mr. Gridley about it, he told us if we could show him where we could raise enough members to raise enough money to put this thing through, he would take hold of it.

Q. Well, did you have any other conversation?

A. Well, the conversation run on the case and so forth, what chances we had. He said there was no doubt about us winning.

Q. Chances for what?

A. Winning this property in New York.

Q. You did have a conversation along that line, did you?

A. Yes, sir.

Q. Now, you say that Mr. Gridley said if you could get enough members and collect enough money that he would take charge of it. Did he indicate how much money was necessary?

A. Not then, no sir.

Q. How long did you stay there and talk to him, [150] approximately?

A. Oh, I have been there so many times.

Q. No, on this first visit?

A. Oh, it might have been on hour or two.

Q. Now, at that time, as I understand it, Mr. Jones, you were not a member of any Society?

A. No, sir.

Q. Well, how did you happen to be up there seeing Mr. Gridley when you were not a member?

A. Well, we had seen a piece in the newspaper, it was in all the Wilkes-Barre papers, to get all heirs together throughout the country that they are about to settle this estate.

Q. You say your wife was an alleged heir?

A. Yes, sir, she claims to be.

Q. Did you at the time you had this meeting make any definite arrangements with Mr. Gridley?

A. Well, not that time, I don't believe. I got more acquainted with him on trips afterwards.

Q. So that you have been seeing him more than this one occasion?

A. Oh, yes.

Q. After that first meeting that you talked about where you say Mr. Gridley said if you got enough money together he would take charge of it, what did you do?

A. Well, we went home and called the heirs together in my home and told them how things were, what he had said, and then we seen how many we could get to pay $5.00 initiation fee, and $2.00 a month.

Q. In other words, what you mean is start an [151] organization there in Wilkes-Barre?

A. No, we were trying to start one then, but we did not get it started until December 8th, 1922.

Q. And when you refer to the organization started December 8th, 1922, do you mean this National Organization?

A. Yes, sir.

Q. Now, I will ask you whether or not you became a member of the National Organization.

A. Yes, sir.

Q. Did you subsequent to December 8th, 1922, have occasion to call on Mr. Gridley again?

A. Yes, sir.

Q. And where was that?

A. 3312 West 39th Street, New York.

Q. This same place?

A. The same place.

Q. And under what circumstances did you go to him the second time?

A. I believe the second time was to tell him how we were getting along in members.

THE COURT: He has not said he did not go again before the December meeting.

MR. WATKINS: I will ask him.

Q. (By Mr. Watkins): Between the first time you went there, the time that you related, on December 8th, did you make any visit to see him.

A. Yes, sir. [152]

Q. You had a second visit before the meeting December 8th?

A. Yes, sir.

Q. And what was the nature of that meeting?

A. To let him know how we were getting along on members and so forth.

Q. Did you go alone or with somebody on that occasion?

A. I went many times. I don't remember. I have been there many times alone.

Q. Do you remember anything about the conversation that you had with Mr. Gridley on this second visit between the time that you have related and December 8th?

A. Well, I can't say. I have been there so many times I don't know just when it was that we talked the different things over. It was one time or another.

Q. Now, how many times, if you know, did you visit Mr. Gridley prior to this meeting December 8th, 1922?

A. Oh, I should judge three or four.

Q. You think you went to see him at least three times?

A. Yes, sir.

Q. And possibly four before December 8th, 1922?

A. Yes, sir.

Q. What was the reason for those visits, Mr. Jones?

A. To let him know we were progressing.

Q. By "progressing" what do you mean? [152]

A. How our members were coming in, if we were getting anywhere for him to handle it.

Q. So that all your visits prior to December 8th, 1922, were merely for the purpose of advising Mr. Gridley relative to the extent of your organization to date?

A. Yes, sir.

Q. Were you ever present, Mr. Jones, at any meeting at which Mr. Gridley was employed by the National organization formed in Wilkes-Barre on the 8th of December, 1922?

A. Before December 8th?

MR. WATKINS: Will you read that question please.

(The question was read by the Reporter.)

A. Yes, sir.

MR. WATKINS: I did not catch your answer.

A. Yes, sir.

Q. And when was that, if you remember, approximately?

A. That was the early Spring of '23.

Q. Where was that meeting held?

A. In Mr. Murray Roat's store in Kingston.

Q. Do you remember the conditions under which Mr. Gridley happened to be at that meeting?

A. I went to New York for him. He told me that he would never come outside of New York on this matter, if he took it, so I felt as though these people that were putting their money in it should see him and hear for themselves what he had to say, and I coaxed and coaxed him, so he rode with me to Easton in the train. We got off the train and stayed over night in Mrs. Howell's home, and [154] drove from there to Wilkes-Barre the next day, a Sunday I believe it was.

Q. So that this meeting that you have just lately referred to was a meeting held on Sunday?

A. Yes, sir.

Q. In Kingston, Pennsylvania?

A. Yes, sir.

Q. And you say that was in the spring of 1923?

A. Yes, sir.

Q. What, if any, arrangements were made at that meeting relative to the employment of Mr. Gridley by the Society?

A. Well, we took him as our attorney; of course, we knew that he was disbarred.

Q. How did you know that?

A. Why, he told us so himself.

Q. But you did employ him as an attorney at that time?

A. Yes, sir.

Q. And what was the purpose of the employment?

A. To represent us in this case.

MR. CHOLETTE: Just a minute, I think, your Honor, this ought to be limited to what was talked there. This witness' conclusion of what the purpose was, I do not think is proper.

THE COURT: I think you had better ask him for the conversation. Give the substance of it, if you can't remember the exact words, but you had better state [155] what was said.

Q. (By Mr. Watkins): At this meeting, Mr. Jones, what conversation did you have, either you or anybody present, or the conversation of Mr. Gridley relative to the employment, if any?

A. Well, we took it up and wanted to know how much he wanted.

Q. Just tell what was said.

A. Well, Mr. Roat says to him, after we were about through with the meeting, "Now, Mr. Gridley," he says, "How much money do you think will be necessary for a case like this?" Mr. Gridley says, "Well, that is a hard matter to say," and Mr. Roat says, "Do you think $20,000 would do any good?" He said, "If you raise me $20,000, I will put it through all the courts of the United States."

Q. Was there any further conversation relative to the raising of such money?

A. No, that was—we were to write out for money to the different heirs.

Q. I asked you was there any conversation further conversation at that meeting relative to whether or not you would collect such funds?

A. Oh, yes, we said we would try to get it in.

Q. Did you tell that to Mr. Gridley?

A. Yes.

Q. Who told him?

A. Most all of us heirs, the whole Board. [156]

Q. Who was present besides Mr. Roat, yourself and Mr. Gridley?

A. Mr. Rhimes, Mr. Biddingham, Mr. Booth, Mr. Pyshu, and Mrs. Howells and several others, I do not remember.

Q. I will ask you whether or not Mrs. Wright was in attendance at that meeting?

A. Oh, yes.

Q. Did Mrs. Wright come down on the train from New York to Easton with Mr. Gridley and yourself?

A. Yes, sir.

Q. And did she also drive over with you from Easton?

A. Yes, sir.

Q. Now, did you at that meeting, reach any conclusion as to the employment of Mr. Gridley?

MR. JEFFRIES: Just a minute, your Honor, I object. That is calling for a conclusion of the witness.

MR. WATKINS: I will withdraw it.

Q. Mr. Jones, did you have any conversation at that meeting relative to the employment of Mr. Gridley?

A. We, who do you mean, we, Mr. Gridley?

Q. Yes, the employment of him by your Society?

A. Oh, yes, surely.

Q. Well, what was it?

A. We wanted to know how much he would take it for. He said it would be $500 a month.

Q. Did you have any further conversation as to whether or not you were to pay him $500 a month?

A. Yes, we were to pay him $500 a month in ad- [157] vance.

Q. I will ask you whether or not the officers there agreed to that?

A. Yes, they did, yes sir.

Q. So that at that meeting he said he needed $500 a month for his salary and you agreed to pay it?

A. Yes, sir.

Q. Why were you paying him $500? What was he supposed to do for you for that $500? Did you have any conversation about that?

A. Yes, sir.

Q. You did?

A. Why, yes, sir, we did.

Q. What was that conversation?

A. Why, he was to take this case and put it through courts.

MR. McARTHUR: I object to that. He has asked for the conversation. He says he was to do certain things. He is not asking for the contract. He is asking for the conversation.

THE COURT: Overruled. He is stating the substance of it. On cross-examination, I will permit you to get more into detail, if you desire.

MR. McARTHUR: Exception.

Q. (By Mr. Watkins): What did Mr. Gridley say he was to do for this $500? Did he say he was to do anything?

A. Yes, he was to compile these records and so forth and get them in shape to present them in [158] court.

THE COURT: Did Mr. Gridley say that at that time?

A. Yes, sir.

Q. (By Mr. Watkins): Was there any conversation at

that meeting on the part of Mr. Gridley, Mrs. Wright, or anybody else relative to the publication of a book?

A. No, sir.

Q. You have testified, Mr. Jones, that Mr. Gridley told you at that time, or prior thereto, that he was or had been a practicing attorney?

A. Yes, sir

Q. And you have testified that he said that he had been disbarred?

A. Yes, sir.

Q. Now, as I understand your testimony, you were hiring him as an attorney at this time?

A. Yes, sir.

Q. Was there any conversation had at this meeting relative to the employment of a disbarred attorney?

A. Well, yes, we brought this matter up.

Q. Well, what conversation did you have about it?

A. **Well, we talked about it, and we wanted to know how he could represent us in court, being a disbarred attorney, and he says on the affidavit that he received from Calgaria, which testified falsely against him in his disbarment proceedings that he could be reinstated.**

Q. You have referred to somebody whose name I [159] have not heard before. What is that name?

A. Calgaria, I think it is, something of that kind.

Q. Was there any conversation about this particular man, Calgaria?

A. Yes, sir.

Q. What was it?

A. Why, this man was hired by the Trinity Corporation to testify falsely against Mr. Gridley, so he told us, and then he was sent out of the country with his wife and several children, and he buried all his children and his wife, and he seen that his luck was coming so bad having testified falsely, and he came back to Mr. Gridley and told him that he was sorry for it, and he went down and signed an affidavit to that effect which Mr. Gridley says he had.

MR. GRIDLEY: You are a damn liar.

THE COURT: Now—

MR. GRIDLEY: I can't help it.

THE COURT: Adjourn court and take him over to my chambers. Adjourn court until tomorrow morning at half past nine.

BY MR. WATKINS:

Q. Mr. Jones, I will ask you whether or not at any time the National Organization employed Mr. Gridley in any capacity?

A. Yes, sir.

Q. And when was that employment entered into?

A. I believe it was in the Spring of 1923.

Q. It was some time subsequent, wasn't it, to December 8th, 1922?

A. Yes.

Q. Were you present at the time Mr. Gridley was employed?

A. No, I wasn't.

Q. When did you first know that there was any such employment?

A. We sent Mr. Grover, Attorney Grover, from Wilkes Barre down to make arrangements with him. When he came back he reported to us that Mr. Gridley—

MR. McARTHUR: Just a moment. I object.

MR. WATKINS: Just a moment. You may strike out that answer.

Q. (By Mr. Watkins): When did you first learn of your own knowledge? Not what anybody told you, but when did you, of your own knowledge, learn that any employment had been entered into between Gridley and the Association?

A. It was when Mr. Grover came back.

Q. He told you that, didn't he?

A. Yes.

Q. But when did you first learn of your own knowledge, not what somebody else told you, but from some contact that you had.

A. At the time we had the meeting in Roat's store.

Q. And that was approximately when?

A. That was in the Spring of 1923.

Q. At that meeting in Mr. Roat's store, did you have any discussion with Mr. Gridley relative to his salary?

A. Yes.

Q. Without telling us what was agreed upon, what conversation did you have which showed what the agreement was, if any?

A. We was to send him $500 a month in advance.

Q. Who said that?

A. Mr. Gridley.

Q. Did you hear him?

A. Yes.

Q. Did he say anything at that meeting relative to what he was to do for that money?

A. Yes.

Q. What did he say?

A. He says that there would be other moneys besides the $500 which would have to be for expenses in recovering books and so forth, to get this case together.

Q. Was there any discussion relative to what these books were for?

A. Yes, to prepare the case for court.

Q. Did Mr. Gridley say that?

A. Yes. He had to have them records, he said.

Q. After that meeting in Mr. Roat's store, in the Spring of 1923, did you personally have any further contact with Mr. Gridley?

A. Yes, often.

Q. "Often" did you say?

A. Yes.

Q. Well, how often?

A. I can't say, maybe sometimes three or four times a month, sometimes less.

Q. And how long did that contact continue?

A. Until just before we broke.

Q. And when was that?

A. In the Fall of 1923.

Q. So that, between the Spring of 1923 and the Fall of 1923, you say that you personally had conversations with Gridley off and on, maybe two or three times a month?

A. Yes.

164

Q. When did you sever your connection as Secretary of that National Organization?

A. Well, it was the day after I last seen Mr. Gridley.

Q. Well, when was that if you know, approximately?

A. That was some time in October, I think, 1923.

Q. Do you know whether or not you withdrew as Secretary before or after Mr. Roat withdrew as treasurer?

A. I went there and withdrew, and he withdrew at the same time I did.

Q. So that both of you withdrew together?

A. Yes.

Q. What was your reason, Mr. Jones, for withdrawing?

MR. CHOLETTE: Just a minute. That is objected to, your Honor, as entirely immaterial, irrelevant and incom-

petent, and entirely as self serving. The reason why he resigned is not binding at all on these respondents.

THE COURT: But if it was a result of something they said, or did, I will let him bring his attention to that, and let him state the thing they said or did, which would be admissible.

MR. CHOLETTE: We take an exception, your Honor.

MR. WATKINS: Before you answer that other question, I will ask you: Did you resign because of something said or done by either Mr. Gridley or Mrs. Wright?

MR. CHOLETTE: Just a minute.

A. Yes.

MR. CHOLETTE: Your Honor, I have not objected, but it seems to me that counsel is very leading in all of his questions. That has been going on for two days. It sounds like a cross-examination rather than the examination of his own witness.

MR. WATKINS: There is nothing leading about that.

THE COURT: Objection overruled.

MR. CHOLETTE: Note an exception.

Q. (By Mr. Watkins): Now, having answered that question in the affirmative, will you answer the former question: Tell the conversation that you had with Mr. Gridley or Mrs. Wright, and their conversation with you, which led to your leaving as Secretary.

A. It got where they were starting to form a National Organization—

MR. CHOLETTE: Just a minute, your Honor. He is testifying to what he heard. I will ask that the answer be stricken out.

MR. WATKINS: I do not object to that being stricken.

Q. (By Mr. Watkins): Don't tell what you heard, except what you heard Mr. Gridley or Mrs. Wright say. If you had any conversation with them in connection with this, just tell what that conversation was, what you said and what they said, if anything.

A. Mr. Gridley was in Wilkes Barre, and he asked me to get together all of the letters and things that he had sent me and send them back to him.

Q. And is that what caused you to resign?

A. Yes, because I knew they were forming a new National Organization in Philadelphia.

MR. McARTHUR: Just a minute. I object to that. What he knew would not have any bearing on this case, unless he established the knowledge.

THE COURT: Objection overruled.

MR. McARTHUR: Take an exception.

MR. WATKINS: Go ahead, Mr. Jones.

A. I knew they were forming this new Association or National Order in Philadelphia, under Mrs. Lutz. Mrs. Wright told Mrs. Lutz that I turned—

MR. McARTHUR: (Interrupting): If your Honor please, I object to that. It is utterly hearsay, as far as he is concerned. Mrs. Lutz might have told that to him.

THE COURT: How did you find out about what Mrs. Wright had told Mrs. Lutz?

A. Mrs. Lutz came to look at our books and see if the right amount of money was turned in that she sent us, and it was there, and she was told it wasn't.

MR. McARTHUR: That I move be stricken out.

THE COURT: I think he answered your question, Mr. Watkins. I will let you bring it out, if there was something more.

Q. (By Mr. Watkins): Now, you say that Mr. Gridley, just prior to the time that you left the organization, was in Wilkes Barre?

A. Yes.

Q. Was Mrs. Wright with him at that time?

A. I don't think so. I didn't see her, I don't believe.

Q. Well, now, Mr. Jones, you must have had, didn't you, some further conversation than just what you have related to us, that he asked you to return these papers?

A. Yes, he said he would not work with Mr. Roat any more.

Q. Did he tell you why?

A. Yes. He said Mr. Roat was just holding the money back on him.

Q. Was there any further conversation that you had with him in that connection?

A. Not that I remember. He just wanted me to send the letters back, and also our mailing list to him, and that he would show us how to raise money.

Q. I will ask you whether or not at that time, or at any time prior thereto, that he had made any complaint relative to the amount of money that was being collected?

A. Yes, he made complaints, and that he wasn't getting the money in fast enough.

Q. When did he do that, when did he make that complaint?

A. Oh, several times.

Q. Well, when, can you remember?

A. No, I don't just remember.

Q. At the time Mr. Gridley asked to have these letters returned, did he state any reason at all for wanting them?

A. No. He said they would be no good to me, and I might just as well send them back to him.

Q. And it was just subsequent to that conversation that you had with Mr. Gridley, that you did resign?

A. Just a week. I took the papers and letters and so forth over to Mr. Roat's safe and locked them up, and I told Mr. Roat to cross me off the books, as I was going back and look for work.

MR. WATKINS: Take the witness.

Q. (By Mr. Watkins): You had that conversation with him?

A. Yes, sir.

Q. Do you know when that was, approximately, with respect to the time that he was employed by the organization?

A. Well, it was in about the beginning there.

Q. And it was definitely understood between you that the letters would come unsigned?

A. Yes, sir.

THE COURT: I notice there is something in there about letters being sent to him by somebody without any name on them. Was there any talk about that?

THE WITNESS: Letters sent to me?

THE COURT: No, if I remember right, that very exhibit that you got there, "Write him but don't put any name on it."

Q. (By Mr. Watkins): In your letter, Mr. Jones, Exhibit 10, addressed to Mrs. H. G. Lutz, at the end it says, "Now about these people, do you want to put the money in or to finance this as a loan? Don't you think the best thing for you to do is to write Mr. G. and explain this? Just send your letter to P. O. Box 71, Times Square Station, and don't put any name on the envelope, and don't sign your name to the letter except by initial." Now did you ever have any conversation with Mr. Gridley in connection with that? Did he ever talk about that?

A. Never did, never heard of a loan.

Q. But you say this letter is one which he wrote and you sent on?

A. Yes, sir.

Q. And I will ask you whether or not that was in response to a letter which you had sent to him as you have testified you did?

A. I don't know if it was or not.

Q. Mr. Jones, in connection with your conversations with Mr. Gridley, did the question of adverse possession ever come into your discussions?

A. Yes, sir.

Q. When, do you know?

A. I don't just remember when.

Q. Would you say it was toward the beginning of your association with him or toward the end?

A. No, it would be toward the beginning, or the middle of the time he was employed by us.

Q. And you did have definite conversation with Mr. Gridley in connection with that matter?

A. Yes, sir.

Q. Now will you tell us, as closely as you can, what that conversation was, what you said and what Mr. Gridley said about that matter?

A. Well, we were told that the statute of limitations would take effect.

MR. McARTHUR: Now, if your Honor please, I object. He says "we were told." He did not say who we were. He did not say who it was that told him.

MR. WATKINS: I will consent to have it stricken.

THE COURT: I will overrule that. That is any lawyer that he went to would tell him that, probably, any good lawyer that he went to would be likely to tell him that.

MR. McARTHUR: We are not bound by that.

THE COURT: I know it, but that is true, the statute of limitations running, of course. Now then, that is preliminary. These witnesses are not lawyer, and if I tried to make lawyers out of them, I would never get through with the lawsuit. I will overrule it.

MR. McARTHUR: Note an exception.

THE COURT: You won't get any harmful thing in there out of that.

MR. WATKINS: Just explain the conversations that you had with Gridley about that matter.

A. We talked about the statute of limitations running against it. The hardest thing we would have to face, and if we had any way of overcoming it. He said there would be a way, if we had an heir in the association that was either a subject of Holland or Great Britain. I said we have heirs in Canada, would that help? He said that would be just the thing, if you have heirs there. I said, "We have." He said, "That will make England force the United States to fulfill the treaty to protect the subjects of that country to recover what belongs to them."

Q. So that his explanation of the way to defeat the statute of limitations was having a foreign heir?

A. Yes, sir.

Q. Mr. Jones, you have referred in one of these letters to the fact that you were in Mr. Gridley's office in New York from 9 o'clock in the morning to 6 o'clock in the afternoon. What did you talk about during that time?

A. About the case.

Q. Well, yes, I know, about the case. What about it?

A. I don't remember what all took place. I don't remember what we were talking about. It was all pertaining to the case.

Q. At that time, I will ask you whether or not Mr. Gridley showed you any data, any maps or blueprints or anything else which he claimed were a part of his proof?

A. No sir, he did not show us anything.

Q. Were you there alone on that occasion?

A. Yes, sir.

Q. I will ask you who did the most talking, you or Gridley?

A. Mrs. Wright, I think.

Q. In other words, Mrs. Wright was in the office at the same time?

A. Yes, sir.

Q. And you think that she talked more than either you or Gridley?

A. Yes, sir.

Q. Can't you remember anything about the subject matter of all of the conversation that took place?

A. Being there so often, I don't remember what took place that day, what we talked about, all or any one thing. I have been there so often.

Q. But it was the conversation, you are sure, about this claim?

A. Oh, nothing else but that.

MR. WATKINS: I think that it all.

CROSS-EXAMINATION

BY MR. CHOLETTE:

Q. When did you first meet Mr. Gridley?

A. Early in 1922.

Q. About when in 1922?

A. I just don't remember the time.

Q. Can't you give the jury some idea whether it was early in the Spring or in the summer, or about when?

A. It was in the Summer.

Q. In the summer time?

A. Yes.

Q. You think, as you told us yesterday, you met Mr. Gridley when you went to New York, didn't you?

A. Yes.

Q. Mr. Gridley did not come to you, did he?

A. No, sir.

Q. And when you went to New York, you went with some other people with you?

A. Yes.

Q. They had never met Mr. Gridley before, had they?

A. Yes, sir, Mr. Brewer had, he said.

Q. Mr. Brewer had?

A. Yes.

Q. The Association, as I understand it, Mr. Jones had not been formed at that time, had it?

A. No, sir, not formed.

Q. But it is true, isn't it, that over a period of years, there had been a lot of talk on the part of the heirs relative to this property in New York?

A. Oh, yes, for years.

Q. There had been a lot of talk on the part of people around Wilkes Barre relative to this property in New York, hadn't there?

A. Yes.

Q. So that this discussion and this movement on the part of the heirs of the Bogardus family was not anything new, was it?

A. No, sir; it was new to me.

Q. But it was not new to the heirs in that locality, was it?

A. No.

Q. That movement was not in any way started by Mr. Gridley, was it?

A. Not that I know of.

Q. You know that he took no part in it around Wilkes Barre, did he?

A. No.

Q. Is that true?

A. No, he did not.

Q. How long had that been going on, do you know?

A. Before Mr. Gridley was there?

Q. Yes.

A. Oh, I suppose maybe two months.

Q. Isn't it a fact that before you ever talked to Mr. Gridley, that you talked to other attorneys about it?

A. Yes, sir.

Q. And how many attorneys had you talked to around Wilkes Barre and other parts of the country relative to litigation to reclaim this property?

MR. WATKINS: Well, just a minute. You never had been around the country, had you, Mr. Jones?

A. No.

MR. WATKINS: I submit that is not within this man's knowledge, what they had done around the country.

MR. CHOLETTE: He can answer the question. I think the witness can take care of himself, without the District Attorney assisting him. Read the question.

(The question was read.)

THE COURT: He may answer.

A. I talked to one attorney, in company with others.

Q. (By Mr. Cholette): Who was that?

A. Lawyer McQuade of Wilkes Barre.

Q. At Wilkes Barre?

A. Yes.

Q. Had you ever talked to anybody else?

A. Not that I remember.

Q. Are you sure you only talked to one attorney before you talked to Mr. Gridley?

A. I don't remember talking to any others.

Q. Did you ever talk to an attorney by the name of Purcell, at Brooklyn?

A. No, not in regard to the case, no.

Q. What did you talk to Mr. Purcell about?

A. Nothing at all. Mr. Brewer had engaged him before I had got in it.

Q. By the way, who was Mr. Brewer?

A. I don't know who he was, really. I couldn't tell you, but he said he was an attorney, and had a lot of properties, and he said he knew Mr. Gridley.

Q. Was he from Wilkes Barre?

A. No, he said he was from down the State farther.

MR. CHOLETTE: I would like to have this marked for identification.

THE COURT: Exhibit 6.

(A paper was marked Exhibit 6.)

Q. (By Mr. Cholette): Before I get to that, Mr. Jones, isn't it a fact that before you and these other representatives went to New York City to interview Mr Gridley, that you had interviewed at least—you or the members of that group—had interviewed at least three attorneys on instituting litigation?

A Not that I remember, not I, no, sir

Q. Isn't it a fact that you went to Mr Gridley with the idea in your mind of instituting litigation?

A. Yes.

Q. And that what was talked over between you and the other two people who went to Mr. Gridley, was the idea of instituting suits; isn't that the idea?

A. Yes.

Q. And then, when you talked to Mr. Gridley, one of the first things Mr. Gridley told you was that he was disbarred and could not practice?

A. Yes.

Q. He never concealed that from you, did he?

A. No.

Q. In fact, he told you that on your first visit to New York City, is that true?

A. I don't know whether it was the first visit, but he told us anyway.

Q. He told you that voluntarily, didn't he?

A. Yes.

Q. I will show you this letter here marked Exhibit 6, and I ask you if that is one of the letters you wrote; without reading it all, state whether it is your letter?

THE COURT: He has a right to read it all.

(Witness examines Exhibit 6.)

A. Yes, sir, that is my letter.

MR. CHOLETTE: I offer it in evidence.

MR. WATKINS: I have no objection.

THE COURT: It may be admitted.

MR. CHOLETTE (Reading):

EXHIBIT 6

"August 8, 1922.

"S. A. Booth;

Excuse me for not writing sooner, but I am tired. I suppose you know that with your little experience, we started for Albany 9:30 that night; left Albany 9:30 Saturday night. Got home 8 P. M. Sunday night. Trains all late on account of strike. But, we done everything up fine. Gratton took case, and is going to go over the whole thing, and said he did not think he could get it ready for court before the first of the year, as we were a little too late for the Fall term, as it would take from 30 to 60 days to line the case up. But, if he could do better, he said he would. He doesn't want a cent until he is sure he can make a clear case out of it. And then all he wants is his expenses to New York, etc." to file it. Then in case we win, he wants a per cent, and which he said he will name as soon as he is ready for us to sign up. Sounds pretty good, Sam, what do you say? I think I will be in Chepsis next Sunday by auto. If so, will wire you. If you can be there, would be glad to meet you. We are going in regards to forming our family tree. We want to finish that now. So, will wire you when I am ready to go. I hope you got home safe, but I bet you were tired. Well, think of us. It looks like no sleep. Fine night again; just what little we got on the train, and in the depot; and on Saturday night again, I got to bed after 12 o'clock, Sunday night tired out, of which I am sure you know all by now. Hope to hear from you soon, I close with best wishes for a speedy and successful trial. I remain as ever,

Yours truly,

Bob Jones."

Q. (By Mr. Cholette): In August 1922, then, there was talk of litigation through an attorney named Gratton, wasn't there?

A. Yes, not through me.

Q. Well, you wrote this letter?

A. Yes.

Q. You had been up to see Mr. Gratton, hadn't you?

A. Yes.

Q. So that you were active in consulting attorneys about litigation?

A. I didn't consult that attorney about anything.

Q. You went up there and talked to him, didn't you?

A. No, I talked to the man, to give the papers, to represent him.

Q. Where was it you went, when you were telling about Albany, at 9:30?

A. I went up to meet this fellow in front of Gratton's office?

Q. So that you went up to Albany. You did go that far, didn't you?

A. Yes.

Q. But you didn't go into the attorney's office?

A. Yes.

Q. Did you go into the attorney's office?

A. Oh, yes, yes.

Q. What did you go into the attorney's office for?

A. To find out if this fellow was telling the truth, that he had this case.

Q. Then you did go to the attorney's office, didn't you, anyhow?

A. Yes.

Q. Did you say anything when you were up there?

A. Nothing.

Q. You didn't say a word?

A. Nothing.

Q. Did you tell the attorney your name?

A. Not as I remember. I guess I was introduced to him.

Q. But you went all of the way from Wilkes Barre, Pennsylvania to Albany, New York, and went in the attorney's office and didn't say anything about the case?

A. I knew nothing of it then.

Q. You knew enough about it to write this letter, didn't you?

THE COURT: Who is that letter addressed to?

MR. CHOLETTE: S. A. Booth.

Q. Who was Mr. Booth?

A. That is a friend of mine. **He is an heir in the estate.**

Q. Mr. Booth was one of those interested in this estate, isn't that true?

A. Yes.

Q. And more or less active?

A. He was a Board member.

Q. He was a member of the Board?

A. Yes, but not at that time.

MR. CHOLETTE: Mark this for indentification.

THE COURT: Exhibit 7.

(A paper was marked Exhibit 7.)

Q. At the time this letter was written, Exhibit 6, Mr. Jones, you had not had this talk with Mr. Gridley in which you said he was employed, had you?

A. No, sir.

Q. That talk was not had until the following Spring, was it?

A. With Mr. Gridley?

Q. Yes, where you claim he was employed?

A. That was talked with him before that, though.

Q. I know, but when you made your arrangement, as you claimed, that was in the Spring of 1923, wasn't it?

A. I think it was.

Q. Allright. And is this a letter that you wrote (handing Exhibit 7 to the witness)?

(Witness examines Exhibit 7.)

A. Yes, sir, that is my letter.

Wilkes Barre, Penna.
October 12, 1922.

"Mr. Newell:
Dear Friend:

A few lines to let you know that the lawyer you heard speak at our meeting here just left for home. I held him over here for another day, so that he could go over our papers with our lawyer. And they both are sure, without any doubt, that we have a good clear case, and are going to fight it through to a finish. We are going to take our case out of New York State, so that we can get a fair and square deal. We are going to try and take it to Washington, D. C., to the United States Supreme Court. I thought it was my duty to tell you this, and will keep you posted of every move we make; and will close, hoping to hear from you, saying you arrived home safe, and I beg to remain, your true and loyal friend, for a fair and square deal for one and all.

Mr. Robert Jones."

Q. (By Mr. Cholette): Who was Mr. Newell?

A. I don't remember who he was.

Q. You address him there as "Dear Friend," didn't you?

A. Yes, sir. I addressed hundreds the same way.

Q. Do you mean to tell this jury that you don't remember who Mr. Newell was?

A. I don't, not now.

Q. Have you ever heard of him before?

A. Not as I remember.

Q. Well, that is your letter, isn't it?

A. That is my letter.

Q. All right. Well, who was this lawyer that came over there and gave the speech, the talk?

A. Well, now, I am not sure about that, but I think it may have been a fellow from Seattle, Washington. Mr. Griswold sent him on here to interview Mr. Gridley.

Q. That was in 1922, wasn't it, Mr. Jones?

A. I don't know when it was.

Q. Well, that is the date of the letter, isn't it, October 12, 1922?

A. I wouldn't say for sure that it was.

Q. You would not say that date was not correct?

A. Oh, no, I wrote the letter.

Q. So there was a lawyer who came over there and gave a talk, isn't that true?

A. Yes.

Q. And who was your lawyer in Wilkes Barre that you made mention of, that you "held him over one day to see our lawyer."

A. Attorney Grover.

Q. Attorney Grover?

A. Yes, sir.

Q. So that in 1922, then, there were at least three lawyers mixed up in the case, weren't there?

A. Not that we paid any money to.

Q. But there were three lawyers who had been consulted, weren't there?

A. Well, not by us.

Q. Did you hear this speech that this lawyer made?

A. I don't remember.

Q. Mr. Jones, do you mean to tell the jury that you don't remember whether you heard this lawyer give this talk that you wrote this letter about?

A. I certainly don't remember it.

Q. Do you remember writing this letter?

A. I don't remember writing it, but I know it is my letter.

Q. But after reading this letter, you don't remember whether you heard this attorney give this talk?

A. No, sir, I don't.

Q. What did you mean when you said, "the lawyer you heard speak at our meeting here, at which meeting you were present?"

A. It must have been that.

Q. Mr. Jones, you heard Mr. Roat testify yesterday, I suppose?

A. Yes.

Q. You were here in the court room?

A. Yes.

Q. Were you to New York with Mr. Roat on several occasions when inquiries were made as to what had been done?

A. Yes.

Q. Did you, like Mr. Roat, ask to see what had been done and see what Mr. Gridley had?

A. Yes.

Q. And he didn't show you anything?

A. No. He would make an offer to pull out the drawer to show us, and she would say, "No, no, boss, don't show that."

Q. So that you, on your many visits to New York, during the summer of 1923, you had no success in being able to see what Mr. Gridley had done, and he would not show you, is that right?

A. Nothing at all.

Q. Nothing at all?

A. No, sir.

MR. CHOLETTE: I woudl like to have this marked, please.

THE COURT: Exhibit 8.

(A paper was marked Exhibit 8.)

Q. About how many visits do you make in New York during the summer of '23?

A. More than I could say, plenty.

Q. And on all those visits you had no success?

A. No, sir.

Q. Is this your signature on your letter (handing a letter to the witness)? That is your letter, is it not?

A. That is my signature. I do not say that is my letter.

MR. CHOLETTE: I will offer it in evidence.

MR. WATKINS: Well, with respect to this letter, I submit that the original is the best evidence. This purports to be a copy and it is addressed to nobody in particular. I do not know to whom it was.

MR. CHOLETTE: That is the letter signed by him. That is his signature. I submit that is an original. He admits that is his signature on that letter.

A. I can tell you how I got them letters.

THE COURT: Why don't you ask him a few questions about that before I rule on that?

MR. CHOLETTE: And the envelope addressed is attached to the letter.

THE COURT: Nobody has sworn that it was the letter that was in the envelope. Mr. Watkins, ask him some questions before I rule on it?

Q. (By Mr. Watkins): Do you know whether or not you sent such a letter to the name of the man who appears on the envelope?

A. Where is the name of the man?

Q. It appears on the envelope attached.

A. I don't know. I may have. These letters was typewritten in New York and sent to me by Mr. Gridley to mail out, many of them.

Q. Do you know whether or not that letter was so sent to you from New York by him?

A. I don't know. I got so many of them, I can't remember whether this was one or not, because it is a better way of making a letter out than I know how to do.

Q. In other words, the form of it is better than your education allows you to do?

A. Yes, sir.

Q. That makes you think—

A. It is not mine.

Q. That it is not your letter?

A. No, sir.

Q. And you say that it was a custom for Mr. Gridley to write letters and send them to you for you to mail out to the heirs?

A. Yes, sir.

Q. But you don't want to swear that this letter is one of them, but that you merely think it is because of the form of it?

A. Yes, sir, there are so many of them, I can't remember.

MR. WATKINS: Under those circumstances, I have no objection to it.

Q. (By Mr. Cholette): That is your signature? And you signed that?

A. Yes, sir.

Q. And you know how to read, don't you?

A. Oh, indeed, yes.

Q. You would not sign this unless you knew what was in it, would you?

A. Why, no.

(Exhibit No. 8 so offered and received in evidence was read to the Court and jury by Mr. Cholette as follows:

"Wilkes Barre, Pennsylvania,
"July 24th, 1923.

"Dear Friends:

"This will be a report of the week of July 23rd. Mr. Roat and I have just returned from New York after having a conference with our New York representative."

THE COURT: What is the date of that?

MR. CHOLETTE: July 24th, 1923.

"We went down with the intention of having a thorough understanding and why there is so much delay. After going over the matter with Mr. Gridley at New York and being shown some of the work which he has already completed, we were satisfied that we must have a little more patience. We are more encouraged now after seeing what he has already completed and what he has yet to do, than we ever were before, and are positive that if the heirs would stand behind us financially that we are bound to go through with this matter successfully.

"We are preparing a circular to send out to the field workers and we expect every heir to get their shoulders to the wheel and back up this matter financially as our treasury is in very bad condition. We are now at the most critical point in the matter, so will everyone take off their coats and get into the fight and take this matter to heart. You will hear from us a little later.

"Yours very truly,
"Robert Jones, Secretary.
"Box 442, Wilkes Barre, Pennsylvania."

At the bottom is a post-script.

Q. By the way, there is the initial on the letter "R. J." line C. M. D. R. J. are your initials, are they not?

A. Yes, sir.

Q. And where or not those are the initials placed on the letter, were ordinarily the initials placed by the one who types the letter?

MR. WATKINS: The letter shows for itself.

Q. Those are your initials on there?

A. My initials are R. J.

THE COURT: Who is C. M. D.?

Q. (By Mr. Cholette): Who is C. M. D., do you know?

A. I don't know.

THE COURT: Did you have any stenographer?

A. Yes, I did. I don't remember her name. Mr. Roat and I.

Q. (By Mr. Cholette): You don't remember the name of your stenographer at that time?

A. No, it was a peculiar name.

Q. But you did have a stenographer?

A. Yes, sir.

Q. A stenographer that used the typewriter?

A. Yes, sir.

Q. How long did she work for you?

A. Oh, a couple of months.

Q. You don't remember her name?

A. No, I do not. It is a peculiar name.

Q. You do not know whether the name started with a "D"?

A. No, I do not. I could tell the minute I hear it.

MR. CHOLETTE: Post-script. "Would advise you to get the Sunday New York American of Sunday, July 22nd, and you will see a Supreme Court Judge of this state is working on the very same method as we are in regard to our work in this matter."

THE COURT: Who is that, a Supreme Judge?

MR. CHOLETTE: A Supreme Court Judge of New York state.

Q. (By Mr. Cholette): What did you mean in this letter, Mr. Jones, when you said that being shown some of the work which he has already completed?

A. I never was shown anything to write it.

Q. Why did you sign this letter then? Wasn't it true?

A. No, it was not true. I have gotten many letters sent to me to send out that way that I didn't know whether was true or not.

Q. So when you sent this letter, sent it out, you did not know whether what was in there was true or not, did you?

A. No, sir, we had to raise some money.

Q. And you did not know whether the signature that you placed on there was placed on to a falsehood or not?

A. No, sir.

Q. Isn't it a fact, Mr. Jones, that this letter was dictated by you to your own stenographer in Wilkes Barre, Pennsylvania?

A. If it was, it was dictated from one that came from New York.

Q. You claim then that Mr. Gridley did not want to show you anything in New York City, is that right?

A. Yes, sir.

MR. CHOLETTE: I would like to have this letter marked for identification.

(A letter was marked Exhibit No. 9.)

Q. Mr. Gridley then did not want you to work with him in New York City and see what he was doing, is that right?

A. Yes.

Q. That is true?

A. What do you mean?

(question was read by the reporter.)

THE COURT: I excluded that. There is no way of knowing what he wanted. He has already told what he said.

Q. Is this your letter written by you in longhand (handing letter to the witness)?

A. My letter.

Q. That is your letter, is it?

A. Yes, sir.

(Exhibit No. 9 so offered and admitted in evidence was read to the Court and jury by Mr. Cholette as follows:

"Headquarters of National Committee.
"Anneke Jans Bogardus Heirs,
"Wilkes Barre, Pennsylvania.
"February 9th, 1923."

This is Exhibit 9.

"Sam:

"Good news. Your little talk on Sunday took effect as Fenner just turned in his resignation. Fine. Well, I was with Gridley from 9 o'clock Tuesday morning until 6 o'clock Tuesday night. Never moved from his office all that time. I sure had a good talk with him. He is the only man for this job. **Everything is great. He wants me to come and help him arrange his books and stay a week. He said he heard of me, and I was all he** heard I was, a D— good fighter in the cause and a sticker.

"He said within three or four weeks there will be news sent broadcast that it will require him to have a bodyguard to protect him from Trinity. It is a good deal to write about, Sam. I will tell you when I see you again. Murray Roat is going to see him Monday, and the first big gun will be shot off within the next thirty days. **I got Pearsall too. I sure scared H— out of him this time. The next man I want is Brewer, and I will have him very soon,** and I suppose when I get him there will be another one to get by that time.

"Sam. I have got to answer just 79 letters today, so please excuse this short one, but above all things stick to the fight, and we are rid of some excess baggage and will soon be rid of more. So long, Bob."

Q. So Mr. Gridley then wanted you to spend a whole week with him in New York?

A. So he claimed.

Q. You said in this letter that he wanted you to stay for a week, didn't he? Isn't that true?

A. I think it is. I am not sure.

Q. If Mr. Gridley did not want you to see what he was doing, or see anything about the work, why did he want you to stay in New York for a week, will you tell me?

THE COURT: I will exclude that.

Q. What did he tell you he wanted you to stay in New York for a week for?

A. To help him haul up some books from the other place.

Q. You still claim Mr. Gridley did not show you anything when you were in New York?

A. Yes, sir.

THE COURT: This was before he had been employed, wasn't it?

MR. CHOLETTE: February 9th, 1923.

THE COURT: Was that before or after he was employed?

A. Indeed I don't remember. He may have been employed then.

THE COURT: What did you plan that you could do if you stayed a week?

A. We did not see that we could do anything. That is the reason we did not go to the expense of it.

THE COURT: You are not a lawyer?

A. No, sir.

THE COURT: What had you ever done before that time? What kind of work have you done?

A. Nothing, only run around and see what we could—

THE COURT: I mean what business were you in?

A. Solicitor.

THE COURT: For what?

A. Milk business and laundry business and so forth, worked in the coal mines at some time.

Q. (By Mr. Cholette): But you still claim that when you were in New York, Mr. Gridley refused to show you anything, is that right?

A. Yes, sir.

Q. What did you do when you were in his office for a whole day from 9 o'clock in the morning, from 9 o'clock Tuesday morning until 6 o'clock Tuesday night?

A. Sat talking with him.

Q. Never looked at anything during that time?

A. Didn't see a thing.

Q. Just talked with him all day, is that right?

A. Yes.

Q. But when you were in the attorney's office in Albany, you never talked to the attorney at all, is that right?

A. No, not in regards to the case, because I knew nothing of it.

Q. Well, you started to work on this case in the summer of 1922, didn't you?

A. Going around, yes, we were then looking for a will that was supposed to be lost, the papers stated in Wilkes Barre.

Q. Mr. Jones, the talk about lawsuits and litigation, as far as you were concerned and the members at Wilkes Barre were concerned was not started by Mr. Gridley, was it?

A. Well, we were trying to get a lawyer to handle it, sure.

Q. Was anything paid to this attorney in Brooklyn personally?

A. Not that I ever paid to him.

Q. Don't you know that he was paid $500?

A. Yes.

Q. You know that, don't you?

194-195

A. Yes, sir.

Q. Mr. Gridley had no contract with these people, so far as obtaining dues was concerned?

A. Not at that time, no.

Q. When did you first hear any discussion by Mr. Gridley about the publication of a book?

A. Well, I think around September, 1923.

Q. And when did you resign from the organization?

A. I think it was in October.

Q. And in September or in the summer of 1923, didn't Mr. Gridley insist that the only way that anything could be done with this matter was to publish a book?

A. He talked on that, yes.

Q. And you and Mr. Roat disagreed with him, didn't you?

A. Yes, sir.

Q. You and Mr. Roat told him that you wanted litigation, isn't that right?

A. Yes, sir.

Q. And he told you that litigation would never get you anywhere, didn't he?

A. Then, yes.

Q. He did tell you that, didn't he?

A. After, yes.

Q. And he told you that the only way you would ever get any place was to publish a history to create public opinion?

A. A pamphlet, not a book, a pamphlet.

Q. All right, whatever it was, isn't that true?

A. Yes, sir, that was what caused the break.

Q. Isn't that what brought on the break, the fact that Gridley did not want litigation and you wanted litigation, isn't that true?

A. After he was ready to leave us off.

Q. Wasn't that what brought on the break?

A. Not only that, no.

Q. That was one of the principal things that brought on the break?

A. Not one of the principals.

Q. Wasn't it one of the things that brought on the break?

A. Yes.

Q. But you don't think that was the principal thing, do you?

A. That?

Q. Yes.

A. No, there would be others with it as good.

Q. But you do know that Mr. Gridley advocated the publishing of a book iu 1923?

A. No.

Q. A pamphlet then?

A. A pamphlet.

Q. And you do know that in order to prepare this it was necessary to obtain a great deal of data, wasn't it?

A. Yes.

Q. He told you that, didn't he?

A. He did not say a great deal.

Q. Just answer the question so the stenographer can get it, yes or no?

A. Not a great deal, some.

Q. That was one of the things at least that brought about the breaking up?

A. It did not break then, that was the start.

THE COURT: The court will take five minutes' recess.

(Whereupon a short recess was taken.)

Q. Mr. Jones, can you state when Mr. Gridley severed his connections with the association?

A. Why, I think he severed it three or four times and received money afterward.

Q. When did he finally sever his connections completely?

A. I don't remember.

Q. Was that before or after you did?

A. I don't know as he did before we did.

Q. Yau say that you severed your connections first, is that right?

A. No, I didn't say that.

Q. When did you sever your connections?

A. Some time in October, I think.

Q. October, 1923?

A. Yes.

Q. Had Mr. Gridley severed his connections then?

A. Well, I don't know as he ever severed his connections with us at all. He just simply went with Philadelphia.

Q. You say that you severed your connections about October, 1923?

A. I think so, about that.

Q. As I understand it, Mr. Jones, you did not agree with Mr. Gridley's idea about the publication of a book, did you?

A. Well, I did in a way.

Q. Were you opposed to it?

A. Opposed to it, yes.

Q. You were opposed to it?

A. Yes.

Q. You say that first was started in September, 1923, is that right?

A. I would not say what time.

Q. About when?

A. Well, about the time our funds was coming slow.

Q. About when was that?

A. Well, I don't know. The checkbook would show that, I suppose.

Q. Isn't it a fact that you were annotating the publication of this book after Mr. Gridley talked to you about it?

A. No book, a little pamphlet, he was going to get out with certified copies photostated in it.

Q. This is a letter that you wrote, isn't it?

A. This is a letter that was sent to me by Mr. Gridley to send out.

Q. You signed that letter. That is your signature on that, is it not?

A. Yes, sir.

Q. And that letter or one like it was sent out to different societies all over the country, wasn't it?

THE COURT: Exhibit 10 is admitted. You may read Exhibit 10.

(Exhibit 10 so offered and admitted in evidence was read to the Court and jury by Mr. Cholette as follows:

"August 7th, 1923."

"Mrs. Henry G. Lutz

"Dear Madam:

"I received your letter of the 1st and am sending you a letter which I wish you would write to Keithline if it meets with your approval. Just let us see what he is going to say for himself. Of course, you know he is the man who went down to New York with Gruber to see Mr. G. and induce him to stop working on this with us and threatened if he did not quit what he would do with him.

"They are making very little headway, but suppose that that very little counts. I have just returned from a trip to Michigan to address a state-wide meeting there. There was some 1,800 people attended, and they had some rousing meeting. I wish I could impress upon you all what a difference the social features make on this earth. I know some of you think it makes no difference and that your people would not care for it, but anything deserves a trial and a little ice cream and cake is a powerful influence on the stomach and mind. These people are going to have another meeting at the end of this month, and Mr. G. has consented to go out there and address them. Don't fail to tell them about these meetings, for when they see the interest multiplying out there, they will do less grumbling to you and will bring more out of that meeting you are going to attend in Philadelphia.

"Now, Mrs. Lutz, you know that since Mr. G. came into this work, our plans have had to be changed, for we have come to an understanding of things we never thought of before or knew of. The principle one of these is the value of an organization back of this work, first to get up the books containing the proof so that we will have the truth about this in written form showing the unwritten chapter in the history of New York; that then the association in each state will have the opportunity of selecting the ablest lawyer from that state to attend a convention and map out future plans, selecting someone who has a state-wide reputation and whom each association will back and stick to, and we will also by this means be in a position where, if anything happens to one, we will have plenty of others to step into his shoes.

"Now, Mr. G. is going to get up a letter or statement covering this, what plans we may expect to follow, so that there will be no misunderstanding. I hope you will try to be patient a little longer, for he is very busy. He is one man working, and as soon as the finances permit, he has arranged for another man, for you know this is a pretty big job for one man. He has many millions of words to read and consider and reconsider, and these things cannot be done in a minute. You know on a job of this kind, if the Government were handling it, they would have a dozen or two dozen people working in it. While we have got but one to depend upon. Now these people, do you want to put the money in or finance this as a loan? Don't you think the best thing for us to do is to write to Mr. G. and explain this? Just send your letter to P. O. Box 71, Times Square Station, and don't put any name on the envelope and don't sign your name to the letter except by initial.

"Yours truly,

"Robert Jones, Secretary."

Over in longhand, "When you write Mr. G. in regard to these people wanting to finance this matter, send me copy of the letter he sent you in regard to this,"

Q. Who was Mr. G.?

A. Mr. Gridley.

Q. That was Mr. Gridley, is that right?

A. Yes.

Q. So as early as August 7th, 1923, Mr. Gridley had already advised you that he wanted the plan followed in the form of the publication of a book, hadn't he?

A. Not as I know of. He sent them letters to us to send out.

Q. You signed that letter and knew about it, didn't you?

A. Yes, I signed that letter.

Q. How many of these letters were sent out, Mr. Jones?

A. I don't know how many.

Q. Several hundred of them?

A. I could not say, I don't know.

Q. Of course, you did not broadcast these letters to these different societies, these different chapters, without reading them, did you?

A. No, I read them.

Q. And what was in there was true, wasn't it?

A. Not as I know of.

Q. Do you mean to say that you would sign these letters as Secretary of this national association and not know whether the things that were in there were true or not?

A. Why, simply because he told us, when I told him I didn't know what to tell these people any more to be getting their money, because we seen nothing from them, that I would have to see something in order to tell them.

MR. CHOLETTE: Just read the question.

(The question was read by the reporter.)

Q. Will you answer that question?

A. Yes, I signed them. I read the letter and signed them.

Q. They were true, weren't they? That is you thought so?

A. I thought so. I was letting him work that way. I thought that was the best way out.

Q. How many people were these letters going to?

A. I don't know how to answer that.

Q. You were secretary of the company?

A. I don't remember.

Q. You say you don't remember whether you were secretary, you don't remember the number? Can't you give the

jury some idea, Mr. Jones, as to about how many members you had, whether it was 100 or 1,000 or 5,000?

A. It might have been around 1,000 or 2,000. I don't know just how many.

Q. Now you maintained an office in Wilkes-Barre, Pennsylvania, didn't you?

A. Yes, sir.

A. And that office was maintained in connection with Mr. Roat, wasn't it?

A. Yes, sir.

Q. And there was a stenographer in that office?

A. Yes, sir.

Q. You were paying rent?

A. Yes, sir.

Q. Paying that stenographer?

A. Yes, sir.

Q. And you were actively in charge of that office, were you not?

A. Yes, sir.

Q. You were paid a salary?

A. Yes, sir.

Q. How much salary did you get?

A. Thirty dollars a week.

Q. You were paid a salary of $30 a week as secretary of this association?

A. Yes, sir.

Q. Is it your claim, Mr. Jones, that Mr. Gridley was advocating lawsuits?

A. In the beginning, yes.

Q. You say he did in the beginning?

A. Yes, sir.

Q. You mean by that in the beginning of 1923?

A. When we first took him.

Q. You have had a great deal of correspondence with Mr. Gridley, haven't you?

A. Very much.

Q. Can you produce one letter or one circular of any kind ever signed by Mr. Gridley in which he has ever advocated lawsuits?

A. I can't produce one letter with his name signed.

Q. Can you produce any letter sent out of his office in which he has ever advocated any litigation?

A. I don't know. The letters are there.

Q. You say these letters that I showed you, some of them were written by Mr. Gridley and sent to you?

A. Yes, sir.

Q. Can you produce or find any of them in which he has ever encouraged litigation?

A. I don't know.

Q. Will you make an effort to try to find one?

A. Yes.

Q. And if you find it, will you produce it?

A. Yes.

MR. CHOLETTE: That is all.

MR. WATKINS: You have offered this in evidence?

MR. CHOLETTE: Yes.

MR. WATKINS: No objection.

THE COURT: That will be received in evidence.

207-209

Q. What did this Trinity refer to?

A. Trinity Corporation.

Q. The people in possession, the corporation in actual possession of the property?

A. Yes, sir.

Q. And when you say in this letter to Sam Booth "he said," who do you mean "he"?

A. Mr. Gridley.

Q. And did he say that to you?

A. Yes, sir.

Q. You say this, Mr. Jones, he said he heard of me and I was all he heard I was, a d—good fighter in the cause, and a sticker. In what cause?

A. The cause of recovering this property.

MR. McARTHUR: I object to that.

Q. What do you mean by that, in what cause?

MR. McARTHUR: Wait a minute. We object to that. He is in a position at this time to put any interpretation on this he wants to, your Honor. It seems to me that in view of the testimony that has already been given by this witness, it is improper for him to put an interpretation on language that is capable of a dozen different constructions.

THE COURT: Overruled.

MR. McARTHUR: Exception.

Q. (By Mr. Watkins): Answer the question. What cause did you refer to?

A. The cause of raising sufficient funds to get membership enough to recover this property from the Trinity Corporation.

Q. Now as I understand your testimony, Exhibit 10, you say was sent to you from New York by Mr. Gridley?

A. Yes, sir.

Q. There isn't any question in your mind about that?

A. None whatever.

Q. I will ask you whether or not this is the only letter that he ever sent to you to be sent out to heirs?

A. No, sir.

Q. How frequently would he send letters?

A. Well, the letters came so strong, people wanting the news that I was not capable of taking care of it, and I told them about it, that I had nothing to say or tell them. He said, "When you get that kind of letters, send them to me and I will send you an answer for them."

Q. And did you do that?

A. Yes, sir.

Q. How frequently would you say that between the spring of 1923 and October of 1923 that you sent letters to him to get answers back from him for you to send out?

A. Oh, quite frequently.

Q. Well, how often, five times, ten times, a hundred times or how often?

A. I don't know how many times.

Q. Would it be ten times?

A. Yes.

Q. Would it be twenty?

A. Possibly.

Q. You think somewhere between ten and twenty times?

A. Yes.

Q. You say that you had a great deal of correspondence at one time or another during this period with Mr. Gridley?

A. Yes, sir.

Q. And as I understand your testimony, you never received a letter signed at any time by him?

A. No, sir.

Q. How would they come to you? Wouldn't there by any signature to them?

A. No signature, no, sir.

Q. Did you during this period of time have any correspondence with Mrs. Wright?

A. She wrote me a few times. I wrote her.

THE COURT: Did she sign her letters?

A. I believe I have one there with her signature on.

THE COURT: Bring out whether or not they had any

talks about whether he would sign any and why he did not sign any.

A. Yes, he told us he would not sign them, he did not want to sign them, because he did not want anyone to know that he was working on this until he got it ready.

RE-CROSS EXAMINATION

BY MR. CHOLETTE:

Q. Mr. Jones, did you testify yesterday that when you went up to see Mr. Gridley the first time that there was some kind of fire door or something?

A. Yes, sir.

Q. You went up in a freight elevator, didn't you?

A. That is the only elevator that was there.

Q. And that was a freight elevator, wasn't it?

A. Yes, sir.

Q. And the elevator opened right into the factory, didn't it?

A. Yes, sir.

Q. And there was a fire door there that had to be opened, isn't that true?

A. Yes, sir.

Q. There was a factory up there where you first interviewed Mr. Gridley?

A. Yes.

Q. And the name of that was the Rex Fire Appliance, wasn't it?

A. Yes, sir.

Q. What did they make, fire extinguishers?

A. Yes, sir.

Q. So when you and these other two gentlemen went to visit Mr. Gridley, he was actively engaged in a manufacturing company, wasn't he?

A. Yes, sir.

Q. Did Mr. Gridley tell you that for business reasons it was very essential that his name should be kept out of this Bogardus matter?

A. He might have.

Q. You would not say he did not?

A. I don't remember him saying that he did not or did.

Q. And wasn't that the reason given by Mr. Gridley why he did not want his name used in connection with this deal at all?

A. No.

Q. You would not say it was not?

A. Yes.

Q. Didn't you just tell us a minute ago you would not say he did or did not tell you that he did not want his name used for that purpose?

A. No, I don't think I told you that.

Q. Was there any talk about that?

A. Not that I remember.

Q. You do not remember any?

A. No, sir.

Q. But you remember these other conversations of course distinctly, don't you?

A. Yes, sir.

Q. But this particular conversation you do not remember?

A. Not in regards to business.

Q. You had had enough dealings with attorneys, had you not, Mr. Jones, so that you knew that a disbarred attorney could not prosecute lawsuits and go in court with lawsuits? You knew that, didn't you?

A. Yes.

Q. And still you were getting money from these different heirs, you claim, to have Mr. Gridley prosecute this lawsuit?

A. Yes, sir, through his reinstatement.

Q. He was not reinstated, was he?

A. He was going to be, so he said.

Q. You knew he was disbarred?

A. Yes, sir.

Q. And knowing that, you went out and got the money from all these heirs, you claim, to prosecute this lawsuit through Mr. Gridley, is that right?

A. Yes, sir, he was to be reinstated when we got it.

Q. I think you told Mr. Watkins that this post-script on Exhibit 8 was not placed there by you, is that right?

A. Yes, sir. I don't think so. I don't remember.

Q. And that was not on there when that letter was sent out by you?

A. I don't know.

Q. Was it?

A. I don't know if it was or not. I don't remember ever putting it there.

Q. You do not remember seeing that on there when this letter was made out?

A. No, sir, I do not.

Q. Is it your opinion that that was placed on there after you signed the letter?

A. I would not say.

Q. You do not know?

A. No, sir.

Q. You would not say it was placed on there after you signed the letter, would you?

A. I could not say, because I don't know.

MR. CHOLETTE: Will you mark this for identification?

(A letter was marked Exhibit No. 12.)

Q. Now just to make it clear to the jury, this letter here of July 24th, 1923, Exhibit 8, that was the letter in which there was a statement, after going over the mater with Mr. G. of New York and being shown some of the work which he has already completed, this letter was mailed out to several different societies, wasn't it?

A. I don't know. It might have been.

Q. Don't you remember that?

A. We mailed out so many, I don't remember.

Q. Have you a poor memory, Mr. Jones?

A. I don't know if it was individuals or societies that we sent it to.

Q. You know it was mailed out to a lot of different individuals anyway, don't you?

A. It certainly must have been mailed out.

Q. Isn't this letter, Exhibit 12, which has been marked for identification an exact copy of this letter here?

A. Yes, sir, it is an exact copy.

Q. Then that letter, Exhibit 12, also bears your signature, doesn't it?

A. Yes, sir.

MR. CHOLETTE: I offer that in evidence.

THE COURT: What is the purpose?

MR. CHOLETTE: I want to show that the post-script was on the other one also.

THE COURT: What does it prove?

MR. CHOLETTE: There was some testimony by him that he did not know of that post-script. I want to show that he did know of it.

THE COURT: That would not prove it.

MR. CHOLETTE: The District Attorney went into it indicating that the post-script was placed on there after the letter was sent out.

THE COURT: It would not prove it or disprove it.

MR. CHOLETTE: It would have some bearing on it if it was on all the copies.

THE COURT: You have not shown whether it went out or anything went out.

Q. (By Mr. Cholette): That is your signature, isn't it?

A. That is my signature.

Q. And that was one of the letters mailed out to some of these individuals, as you have testified?

A. Yes, sir.

Q. And doesn't that copy, Exhibit 12, also have the same post-script that was on this letter, Exhibit 8?

A. Yes, sir.

Q. What is that?

A. It does.

Q. Don't you remember now that post-script was on those letters when they were sent out?

A. I do not.

Q. You do not remember any more about it?

A. I don't remember no postscripts on there at all.

MR. CHOLETTE: That is all.

223-224

Q. (By Mr. Watkins): As a matter of fact, Mr. Jones, you do not know whether that went through the mails or not, do you?

A. I don't know, no, sir.

MR. WATKINS: That is all.

Q. (By Mr. Cholette): What did you do with these letters after you signed them?

A. Which letters?

Q. Exhibit 8 and Exhibit 12?

A. I don' remember the letters now.

Q. You don't remember anything about either, do you?

A. I don't remember them letters now. It is too far back.

MR. CHOLETTE: That is all.

SAMUEL A. BOOTH, was thereupon called as a witness on behalf of the Defendants, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McARTHUR:

Q. Mr. Booth, where do you live?

A. Lancaster, Pennsylvania.

Q. How long have you lived there?

A. I lived there at Lancaster in Lancaster County practically all my life.

Q. Did you ever join an organization known as the Advocates of Justice for the Descendants of Anneke Jans Bogardus?

[1420] A. I became affiliated with the organization at Wilkesbarre, what they called the old national termed.

Q. And you belonged to the old national, did you?

A. I belonged to the old national.

Q. At the time you joined that organization, had you seen Mr. Gridley?

A. No, at the time I joined that, I had not seen Mr. Gridley.

Q. Or Mrs. Wright?

A. Or Mrs. Wright.

Q. Are you a descendant?

A. Yes, sir.

Q. When was it that you joined?

A. I assisted in forming the old national in 1922.

Q. 1922?

A. Yes. It came into birth December 8th, 1922, at what they called the national movement to call all heirs together there from all parts of the United States to assemble in Wilkesbarre on the 8th of December, 1922, in the Y. M. C. A. building. I suppose, as near as I can estimate, 300 people from all over the country.

Q. Do you know who called that meeting?

A. Well, there was a group proposition. They were not official. A group that had been interested more or less in this for a year previous, among them Mr. Jones, myself and Mr. Brittingham from Westchester, and we had some correspondence with different heirs and called that meeting there, and then sent out notices to all to come there. We had some from Wisconsin, [1421] some from Michigan, among them Mr. John W. Page from Michigan and a Dr. Brown and his wife came there from Michigan, and I just can't recall all the names.

Q. Did Mr. Gridley have anything to do with that?

A. Mr. Gridley had not anything to do with that, not to my knowledge, he had not.

Q. Was he there?

A. Mr. Gridley was not there.

Q. Was Mrs. Wright?

A. Or Mrs. Wright, neither one.

Q. Had you seen either of those at that time?

A. I had not seen either one of them.

Q. Well, did you effect an organization?

A. We effected an organization there. We had a committee of nine appointed. That is they, the audience there, selected a committee of nine, and of course among them they selected the ones that had been interested in this and received correspondence to attend there.

Q. Do you recall who some of those were?

A. Mr. Jones was committeeman, Mr. Rhines, Gardiner Spencer.

Q. What is Mr. Jones' first name? Was it Samuel?

A. Jones, Robert Jones, Robert Jones. I will give you the first name. Walter Brittingham, Gardiner Spencer. I can't give you Mr. Rhines' first name.

Q. Was Mr. Brewer there?

[1422] A. Mr. Brewer was not at the attendance.

Q. Was Mr. Grover?

A. Mr. Grover was there.

Q. Was Hannah Lutz?

A. Hannah Lutz was not there.

Q. Or Mr. Teft?

A. Mr. Teft was not there.

Q. Did you know Mr. Roat at that time?

A. Mr. Roat?

Q. Yes.

A. I met Mr. Roat on that occasion, or I think I was at Wilkes-Barre perhaps a month previous to that. I think during October, I was at Wilkes-Barre, or the early part of November, and I met Mr. Roat there and was introduced to him.

Q. Did Mr. Roat tell you that he was not a descendant?

A. Mr. Roat, yes, told me he was not a descendant.

Q. Yet he joined the organization, did he?

A. Now here, I could not say positively whether he joined. He was treasurer and president of that organization.

Q. What is the old national?

A. The old national. Mr. Roat was treasurer and president.

Q. He handled the money, didn't he?

A. He handled the money.

Q. And he was not a descendant, was he, at all?

A. Was not a descendant.

Q. Now, when was it that you first saw Mr. Gridley or Mrs. Wright? [1423]

A. The first, if I recall right, I just could not give you the day, but I recall it was in April, 1923.

Q. And where was that, if you know?

A. What did you say?

Q. Where was that?

A. That was at Kingston, just across the river from Wilkes-Barre in Mr. Roat's hardware store. I can't just give you the day of the month it was, but it was in April.

Q. How did it happen that you went there?

A. I was called there the day before.

Q. Was it by written communication or telephone or how?

A. It was—well, now, I don't know whether—I would not say whether that was a telegram or letter now. I could not say that positively.

Q. You got a message, did you?

A. I got a message.

Q. You went there in response to that message?

A. I went there to Wilkes-Barre on a Saturday previous. This meeting was on a Sunday.

Q. Did you see Mr. Jones?

A. Mr. Jones, yes.

Q. Did you have any talk with him?

A. Well, talked in a casual way, you know.

Q. What did he say about it?

[1424] A. Well, Mr. Jones, he brought Mr. Gridley there.

Q. Mr. Gridley was there at that meeting?

A. Mr. Gridley was there at that meeting. That is the first time I ever met Mr. Gridley.

Q. Where was the meeting held?

A. Held in Mr. Roat's hardware store.

Q. Can you recall how may people were there approximately?

A. Well, no, I could not recall that definitely, that is, give you the exact amount. I presume there was, well, Mr. Jones was there, Mr. Roat was there, Mr. Gridley, Mrs. Wright was there, Mr. Pyshur was there, and his sister. I think Mrs. Howells, Mr. Rhines was there, and I think Mr. Grover was there.

Q. Now, who was Mr. Grover?

A. Mr. Grover was at attorney at Wilkes-Barre.

Q. Can you state now what in substance was the conversation by these different individuals? Take Mr. Roat, for instance. What did he say about it?

A. Well, Mr. Roat said, "We have brought Mr. Gridley down here to discuss this proposition." Mr. Gridley started, he asked Mr. Gridley—

Q. Now what was the conversation?

A. Mr. Roat asked Mr. Gridley his views, and Mr Gridley told him the only views he had or anything was a publication of a book giving the public the heirs' side of the Anneke Jans, the history of it from beginning to end, and to settle this for good and forever.

Q. Had you ever heard this matter discussed in your family at any time?

A. Well, I had an old aunt. My mother never took such a prominent part. I had an old aunt. She seemed to be a woman of that kind, and it was taught into me from childhood. I grew up with it mentally and physically. It grew into me.

THE COURT: How physically?

A. Well, as I grew in physique. That is what I meant to say. I did not graft any of it into my flesh.

Q. (By Mr. McArthur): Then that had been a traditional story in your family?

A. A traditional story handed down, and they told me how my grandfather and great-grandfathers—you know how those yarns go, I imagine, all of you.

Q. Have you ever seen those stories all com- [1426] piled in one volume?

A. No.

Q. Were you interested in seeing those in one volume?

A. Deeply interested in seeing the thing.

Q. Were you willing to pay for it in one volume?

A. I was willing, perfectly willing.

Q. Did you agree at that time to affiliate with these other people in procuring such a work?

A. I agreed to go along with the rest of them and assist them in any way that I could to finance the publication of this book for its value to the heirs, also for the historical value we would get from it.

Q. I think I interrupted you in your statement as to what Mr. Gridley said. Can you recall now in substance the things that were said by Mr. Gridley on that occasion?

A. Mr. Gridley definitely said that he would not have anything in connection with this only in connection with the publication of a book.

Q. Was there anything said about the contemplated lawsuit?

A. Nothing. I never heard it discussed.

Q. Did you hear him at any other time?

A. No, never heard Mr. Gridley discuss lawsuits or anything like that. He never led me to believe that we could recover any property there.

Q. And have you been connected with this work all the time?

A. I have been connected with that until the Wilkes-barre old national organization ceased to function.

THE COURT: But you still believe you can get [1427] that before you get through with it?

A. Do I still believe it?

THE COURT: Yes.

A. I never had any opinion of recovering it, your Honor.

THE COURT: Don't you still think you are going to get something out of it?

A. No, I will state truthfully, I never had any opinion. I wanted the book for any historical value it had.

THE COURT: Don't you still expect to get some money out of that Anneke Jans property?

A. You ask me plain if I expect to recover any property or anything else which the heirs of Anneke Jans have coming or will be claimed to want the possession? You wish to ask me?

THE COURT: Yes, don't you know?

A. I will tell you definitely and plainly, I do not.

THE COURT: No hope at all?

A. Not that I could give hope, no.

THE COURT: No hope?

A. No. I am interested now in behalf of this book.

Q. (By Mr. McArthur): When did you first hear of the book then?

A. When did I first hear of the book?

Q. Yes.

A. The first I heard of the book was at the first meeting. Mr. Gridley then spoke of it as a pamphlet.

Q. Is that the meeting that you were speak- [1428] ing of at Mr. Roat's office?

A. This is a meeting in there?

Q. Yes, in Mr. Roat's store?

A. At Mr. Roat's store.

Q. Then when you heard this proposition made at that time, you were interested and did affiliate?

A. I did affiliate, yes, sir.

Q. Did you pay $25 for a book?

A. I did.

Q. Did you ever get the book?

A. Not yet.

Q. Now, did you ever attend any other meeting subsequent to the one at Roat's store?

A. The only meetings that I attended was one previous of where the national was formed, which I told you, and the meeting as I attended followed, was the one at Roat's store when I first met Mr. Gridley.

Q. And at that meeting, was Mr. Gridley there?

A. That was the meeting I have just explained to you.

Q. Was there any discussion about the $500?

A. Mr. Gridley was to receive $500 overhead and pay his stenographer.

Q. Now, witness, was that made plain in so many words that that was overhead, or was it salary.

A. Paid as overhead, never salary. I never heard the word "salary" used, as overhead, to pay his stenographer.

Q. Was there talk about what constituted the items making up that overhead? [1429]

A. The pay of the stenographer, a typewriter, rent, and stuff like that. That was merely an estimate of the overhead.

Q. Was there any discussion at that time about the book?

A. Discussion about the book, they were estimating the cost and size of it, what it would require, how many pages and stuff like that, and nothing definite at that meeting decided.

Q. Was there any book expert there to help in that?

A. No book expert there. We were all common ordinary green people.

Q. None of you had had experience with the publication of a book, I take it?

A. Not to my knowledge, none of them had. I never had.

Q. Did anybody claim that they had expert knowledge there as to what that book would cost, or the probable size?

A. None in my presence claimed that.

Q. But there was discussion then among you people as to what you wanted to do?

A. Yes.

Q. Did Mr. Gridley say anything at that time as to what the book would contain?

MR. WATKINS: I will submit that all these questions are leading. If Mr. Gridley said anything, this witness knows what he said, if he can remember, and I submit he can tell us what he said.

MR. McARTHUR: That certainly could not be [1430] leading, your Honor.

THE COURT: Overruled.

THE WITNESS: Will I answer that? What was the question? I beg your pardon.

(The question was read by the reporter.)

A. It would contain, the book would contain the early history of Manhattan Island and in regard to the Anneke Jans estate, and we proposed and he proposed that we would back our statements up, whatever they were, everything in that, give an actual positive history of this thing that had been agitated and handed down for centuries and backed by certified copies.

Q. Now can you recall anything else that was said that it was proposed to go into the book?

A. That is a long time back to get from the memory.

Q. Yes, that is true.

A. I will do the best I can for you, because I want this thing exactly right, as I know it, understand. They discussed the book proposition starting—I might repeat, but you will pardon me for that. That is this, I have suggested the pamphlet. Well, in a thing like that, I would imagine myself a pamphlet is a pretty cheap affair. That was my views on the subject, and 60 pages could get you nothing. Then it went on, you understand, and discussed pro and con with different ones that way until finally in the end in the period of time we found it would require three or four hundred pages. Do you see?

Q. Was there anything said about a size of 480 pages, do you recall? [1431]

A. Are you done?

Q. Do you recall that there was anything said about a 480-page book?

A. Somewheres in that neighborhood.

Q. But was there anything said about the probable price?

A. They talked about the price of the pamphlet first. I think it was estimated along $2, $1 or $2. I am not definite on that.

Q. Then when it came to the book, what did they estimate the probable cost of a book of that size would be?

A. Well, no, they did not estimate the probable cost of a book of that size.

Q. Was there anything said about how much money they should raise, that you can recall?

A. The only thing that was discussed there at the formation of that national organization going back previous to the start was that the organization formed with the understanding that each one that became affiliated with it would pay $2 a month in order that we would be able to get the certified copies for Mr. Gridley and keep up the overhead until he compiled that work.

Q. Was there any representation made as to the size of your organization?

[1432] A. The size of it?

Q. Yes the number of members?

A. I had heard, as I stated before, the amount of members there, was assembled there that came from different parts at the formation of the national organization.

Q. I mean later?

A. I will come to that. Let me get it. There was 300, and it grew gradually. Now I could not give you, understand,—Mr. Jones perhaps if he had been here, he could give you the number of members of that organization, but I don't know, as far as I was concerned, understand, from what knowledge I could gather, I don't think it ever run over that limit, 500.

Q. Now, were there any representations at any of these meetings that you have referred to where Mr. Gridley was present that they had sufficient members that they could raise enough money to finance that, cover the overhead expense of $500 a month and enable him to go out and make these investigations and compile this book?

A. We agreed to pay Mr. Gridley the $500 a month overhead and he pay his stenographer, and we were to get the money and finance it. That was it.

Q. Then there were representations made, were there,

that you would raise the money for him to finance this work, didn't you?

A. That was the idea, on that condition Mr. Gridley agreed to compile this for us.

Q. Did your organization do that?

A. We made an effort to do that. [1433]

Q. Did you fail?

A. We evidently did.

Q. Now how long a time, was it talked in the first place, that it would require you to raise the moneys sufficient to do this?

A. I could not say that it was any definite specified time now about that.

Q. You do not recall that there was any special time?

A. No, I do not recall that there was any special specified time, but I know we all wanted to get it off our hands and get it over.

Q. Do you know whether the failure to do that caused some controversy between your association and Mr. Gridley?

THE COURT: The testimony is to the effect that there was no failure, so far.

MR. McARTHUR: Oh, I thought he said there was.

MR. WATKINS: He has not so testified. He said evidently it did fail.

MR. McARTHUR: Yes, evidently it did fail.

THE WITNESS: Evidently I said, your Honor.

MR. McARTHUR: I am using your Honor's interpretation of what they use, the general terms that witnesses use.

Q. What did you mean by "evidently?"

A. Evidently it proved so, it did fail.

Q. It did fail?

A. Yes, sir.

[1434] Q. That is what you meant to say, was it?

A. It did fail, yes.

Q. Whose fault was it that it did fail?

MR. WATKINS: I will object to that.

THE COURT: What do you mean by "evidently it failed?"

A. Evidently it failed. It did fail.

THE COURT: What do you know about it?

A. What do I know about it?

THE COURT: Yes.

A. We will come to that later.

THE COURT: What?

A. We will come to that. It failed.

THE COURT: What failed?

A. We could not furnish the finances for Mr. Gridley to go ahead.

THE COURT. Didn't you furnish him the $500 a month?

A. We did as long as we could. Finally we could not get it.

THE COURT: How long did you furnish it?

A. I could not just say that.

Q. Then you did even fail in furnishing the overhead expense, didn't you?

THE COURT: He has not said how long it was to go. Did they pay forever? According to his testimony, they are not paying it now, but there is nothing in his testimony that would indicate any breach of contract at all yet. He has not said they agreed to pay for any definite time. How long did they agree to pay the $500 a month?

A. It was close to a year, I think. [1435]

THE COURT: That they agreed to?

A. Oh, they did not agree to any specified time. Now, I did not say that.

THE COURT: How long were they to pay it?

A. That is something that I just can't recall, how long it was paid.

THE COURT: He does not know whether they failed to keep any agreement.

Q. (By Mr. McArthur): How long a time did you drift along?

A. Well, it drifted along from April to September.

Q. And then was there anything said?

A. Well, running short of finances, we could not keep up our overhead.

Q. Did Mr. Gridley suggest anything about your continuing or discontinuing?

THE COURT: Excluded now. Find out where that was, what it was, and let him state.

THE WITNESS: Do you want me to answer that question?

Q. No, wait a minute. At the second meeting that you say that you held at the store of Mr. Roat, was there anything said there relative to continuing?

MR. WATKINS: As of what date?

THE COURT: 1923.

A. At the second meeting, that was in June, that was also on a Sunday, and if I recall right, it was the 9th.

Q. June 9th, 1923?

[1436] A. Yes, sir.

Q. At that meeting was there any discussion about your continuing or discontinuing, and why?

A. There was discussion there, and they agreed to continue, and Mr. Gridley had been held up in the compiling of the work through lack of finances.

THE COURT: How do you know that?

A. That has been the report that I got there.

THE COURT: From whom?

A. From the secretary of the committee.

THE COURT: Wasn't it Mr. Gridley? How did the secretary know that it had been held up? Wasn't it Gridley now that said that it had been held up?

A. Mr. Gridley had come to the organization.

Q. (By Mr. McArthur): Didn't you know how much money had been furnished him during these months?

A. $500 a month had been furnished.

Q. Have you furnished anything besides the overhead expense?

A. Had not furnished him anything.

Q. Had you agreed to furnish him something?

A. Not until that meeting. In that meeting they agreed, they voted there, the motion was made and it was carried.

Q. Now, what was that agreement with Mr. Gridley relative to the publication of the book? What was he to receive for it?

A. Mr. Gridley was to receive 15 per cent of that publication, and the committee was to receive 85 per cent. [1437]

Q. Now had that anything to do with the $500 overhead?

A. That had not anything to do with the $500 overhead.

THE COURT: When was that agreement made that you have just told us about, the 85 per cent agreement?

A. The 85 per cent agreement, that agreement was made at the meeting in the previous April.

THE COURT: Previous to what?

A. Previous to June 9th which we are speaking of at present.

THE COURT: That was the first time you ever saw Mr. Gridley, was when you made that arrangement about the 85 per cent?

A. That was stipulated then.

Q. (By Mr. McArthur): Then did you furnish any of this money, that you know of?

A. All I have is the report of the treasurer.

Q. The money for the publication of the book?

MR. WATKINS: He has not said anything about that.

Q. All right, I will ask you, was there any money to be furnished Mr. Gridley for the publication of the book, or the compiling of the records?

A. The $500, understand, as overhead and stenographer's fee, and at this meeting we are speaking of now on June 9th, now you understand that thoroughly?

Q. Yes.

A. At this meeting there was a motion made and carried.

MR. WATKINS: I will submit that the rec-
[1438] ords of the meeting are the best evidence of what took place.

THE COURT: Overruled.

A. There was $500 voted for Mr. Gridley to carry any merchandise, anything that he needed to get.

Q. Now, where were you to get the money to pay for the compilation of the book, getting the records and the documents and to pay the expense incident thereto?

A. The money to furnish the certified copies which we speak of, and the record was to come from the treasurer, and we were to get them.

Q. Were you subscribing for books?

A. We had not paid, bought any book at that time. He was compiling a book at that time.

THE COURT: How did you know that he was compiling it at that time?

A. How do we know it?

THE COURT: How do you know it?

A. He told us.

THE COURT: You say he was compiling a book. How do you know it?

A. We were furnishing the stuff to be compiled.

THE COURT: How do you know he was doing it? Do you know it?

A. No, I could not say what he was doing. I was not there.

Q. (By Mr. McArthur): You are stating what his agreement was, are you?

A. Yes, I am talking of what his agreement [1439] was that he made, which is the only way I can talk.

(A paper was marked Defendants' Exhibit No. 144.)

Q. (By Mr. McArthur): I will show you Exhibit 144 and ask you to identify it. What is it? Refer to the back of it. Perhaps that will refresh your recollection.

A. This is a statement, only this is the items of Mr. Roat's account as treasurer, isn't it?

MR. McARTHUR: I am asking you, witness.

THE COURT: Did you ever see it before in your life?

A. No, I never saw that statement. I never did. How did my name get on the back of that?

Q. I cannot answer it. I am not on the witness stand. Did you ever see one like it?

A. Why, Mr. Roat's account of the stewardship.

MR. WATKINS: I will object to that as not being an answer to the question, not responsive.

Q. (By Mr. McArthur): I ask you if you ever saw one like it?

A. Not itemized. I saw the total sums almost as nearly as I can remember on an account given of the stewardship of Mr. Roat.

Q. That is not your signature then, I take it?

A. Absolutely not.

MR. McARTHUR: Do you object to it?

Q. (By Mr. McArthur): When did you reach Detroit, Mr. Booth?

A. I reached Detroit here on Monday morning at 8:45.

Q. Yesterday morning?

[1440] A. Yesterday morning.

Q. Were you subpoenaed here?

A. I was subpoenaed here.

MR. WATKINS: I will object to Exhibit 144 until it is properly identified.

THE COURT: Excluded.

MR. McARTHUR: Exception.

Q. (By Mr. McArthur): Now, Mr. Jones was a member and an officer of the society, was he not?

A. He was secretary.

Q. Was he active in the work of the society?

A. Yes.

Q. At this meeting that you held at Roat's store, did you have any talks with Mr. Jones?

MR. WATKINS: I will submit that there are two meetings testified to.

A. Yes, I recollect.

Q. (By Mr. McArthur): The June 9th meeting?

A. The June 9th meeting, I talked to Mr. Jones in just a general way.

Q. Now relate as nearly as you can, in your own language, what your conversation with Mr. Jones was relative to the work of this society?

MR. WATKINS: I will object to it as incompetent, irrelevant and immaterial.

THE COURT: Sustained.

MR. McARTHUR: Give me an exception. [1441]

Q. (By Mr. McArthur): And the meeting on the 23rd, do you recall that you had a talk there with Mr. Jones?

A. Yes, we talked with Mr. Jones in a casual way. We were very friendly. Mr. Jones and I always have been friends.

Q. And did he then state what the object of this society was?

A. Yes.

MR. WATKINS: I will object to that, incompetent, irrelevant and immaterial.

THE COURT: Excluded.

MR. McARTHUR: Take an exception.

Q. (By Mr. McArthur): Was Mr. Gridley present at any of these conversations you had with Mr. Jones on either of these occasions?

A. No, I can't say that he was.

Q. You do not recall?

A. No.

Q. Did Mr. Jones at any time at these meetings, or prior to that time, state anything about getting Mr. Gridley interested in this work?

MR. WATKINS: I will object to that as incompetent, irrelevant and immaterial.

THE COURT: Excluded.

MR. McARTHUR: Give me an exception.

Q. (By Mr. McArthur): Your national convention you

say was held some time in December, 1922?
[1442] A. December 8th.
Q. At that time Mr. Gridley was not interested in it, so far as you know?
A. Not as far as I know.
Q. He was not at that meeting?
A. No, he was not there.
Q. Did you take any action at that time relative to getting him interested in it?
A. Previous to that.
Q. All right, when was that?
A. That was along in September. It seemed to be the general consent of everybody connected with that, that was before the organization was formed, Mr. Jones and Spencer and those fellows said, "If only they could get Gridley. If only they could get Gridley. He knew more about this than any man in the world." And finally Grover, Mr. Jones and Gardiner Spencer and H. E. Brewer went down and seen Mr. Gridley.
Q. Was that a committee that was selected to do that?
A. Well, no, our organization was not formed at that time, but that was the agreement among ourselves that they should go. I did not go. Mr. Gridley, they went down and they seen him, and they met him, and the way it come to me, Mr. Jones told me himself—
Q. Do you know how many times?
THE WITNESS: Wait until I get through. I beg your pardon. Let me get through.
MR. WATKINS: I will object to any testimony on the part of the witness as to what Jones [1443] told him.
THE COURT: The objection is sustained.
MR. McARTHUR: I was not asking that.
Q. Do you know how many times the committee went down, or did they go more than once?
A. To my knowledge once, they went down to see Mr. Gridley and he refused to have anything to do with them.
THE COURT: I will strike that out. You do not know that.
Q. (By Mr. McArthur): You do not know what the conversation was down there except as they told you?
A. No, only what they told me, what they communicated to me.
Q. And you do not know how many times they went down there, but you know that they went once?
A. I know they went once.
Q. If they went more than that, you do not know?
A. No, I could not say.
Q. What was the plan of your organization? What did you expect to do with your organization?
A. We expected to furnish the finances to compile this work. That was the object. That was the aim of it.
Q. Now, witness, didn't you know as a matter of your family tradition that this property had been in the hands of Trinity Church for upwards of 200 years?
A. Yes.
[1444] Q. You knew that?
A. I knew that.
Q. And your plan for the society was the publication of a book with these records, was it?
A. Publish the book of these records.
Q. And I think you said that that never had been done up to that time?
A. Had what?
Q. That never had been done up to that time?
A. Never, to my knowledge, no, never. It was never represented to me it had been done.
Q. And was that your interest in coming into this society, to secure that?
A. That was my interest.
MR. McARTHUR: Cross-examine.
THE COURT: We will take a recess until half-past one.
(Whereupon at 12:30 o'clock P. M. a recess was taken to 1:30 o'clock P. M. the same day, Tuesday, March 5th, 1929.)

AFTER RECESS. [1445]

1:30 o'clock P. M.
Tuesday, March 5, 1929.

SAMUEL A. BOOTH thereupon resumed the stand as a witness on behalf of the defendants, and having been previously duly sworn, testified as follows:

DIRECT EXAMINATION (Continued)

BY MR. McARTHUR:
Q. Mr. Booth, did you ever hear any discussion about public opinion in connection with this book?
MR. WATKINS: I object to it as incompetent, irrelevant and immaterial, unless they say when and where.
Q. Well, did you ever hear Mr. Gridley at any of these meetings—
A. Mr. Gridley, all his talk about publicity, public sentiment, as a rule—understand that all great reformations never are brought to—practically all public sentiment—all great adventures in the last few years—
Q. What did he say that this book would accomplish, if anything, with respect to public opinion?
A. It would accomplish for our side of the story that they had never did before. We were ridiculed and scorned. They were held in contempt. Give the heirs' side to the public, so that they could hold their dignity and pride. For a great many years, we have always been held up to ridicule. I have read clippings in the papers speaking of the contempt. They all have read the papers, in New [1446] York, about the fabulous wealth. I know that people in this Court room have.
Q. You understood that?
A. I did, yes.
Q. What did you want to acquire the book for, for the purpose of acquainting them—
A. I wanted to acquire the book for the purpose of acquainting the public, the public sentiment, let the heirs tell their story, that they were not a gang of fanatics, as they were at the time as spoken of in the papers, claiming things—the annoyance of what the papers said, ridicule.
Q. I think you said, to your knowledge, that there never had been before controversy among the Bogardus family about publication in your book?
A. Nothing to my knowledge, no, never was.
MR. McARTHUR: Cross examine.

CROSS EXAMINATION

BY MR. WATKINS:
Q. Mr. Booth, this has not happened yet, has it?
A. Not to my knowledge, no, it has not happened.
Q. You say, Mr. Booth, that you first joined any organization of descendants of this illustrious family in December, 1922?

A. I became affiliated then in the National movement, with the National organization at Wilkes-Barre.

Q. You say, prior to your taking up membership in that organization you had had meetings with other people, in which you discussed the affair? [1447]

A. I have been to what you call a meeting.

Q. A little louder.

A. Let me answer that the way I want to. I think it will be satisfactory, without any objection. I have conversed with Mr. Jones quite a number of times.

Q. Is he the only one with whom you had ever discussed that?

A. Mr. Jones, Mr. Rhines, Mr. Brewer, Mr. Spencer.

Q. Was the discussion with those men together or with each one individually?

A. I discussed that with Mr. Jones, Brewer, Spencer and Burlingame.

Q. Four or five grouped together?

A. Yes, four or five grouped together. That is what I wanted to give explanation of to you.

Q. That was prior to December 8, 1922?

A. That was prior to December 8, 1922.

Q. You say that some time prior to December 8, 1922, some one had interviewed Mr. Gridley on behalf of this little group of people around Wilkes-Barre there?

A. Yes. You ask that question this way; I understood; didn't you?

Q. You testified on your direct examination?

A. Yes.

Q. (Continuing) That you understood somebody had—

A. Do I understand that is the way you put the question?

Q. As I understand your testimony, at the [1448] time you joined on December 8, 1922, your object in joining was to secure a book?

A. The object in joining was to secure a book. That organization was formed to furnish the—

Q. To publish a book?

A. That organization was formed to furnish the finances to publish a book.

Q. At the time you joined was there any discussion at that meeting on December 8th as to whom they should get to publish the book?

A. Discussion, it was understood, understand, at least, I understood so, that Mr. Gridley was to compile this.

Q. Was to compile?

A. Was to compile.

Q. So that in December of 1922 you understood that for this national organization Mr. Gridley was to compile a book?

A. He was to create public sentiment for us in a book of pamphlet form.

Q. You understood that on the 8th day of December, 1922?

A. That was communicated to me, although you won't let me communicate the fact with you, will you?

Q. That was your understanding?

A. That was my understanding.

Q. You gathered that from the discussion had at this meeting, that that was the purpose of the organization?

A. For publicity.

Q. Mr. Booth, you did understand from that meeting on December 8, 1922, that the purpose [1449] of the organization was to have Mr. Gridley compile a book, write a book?

A. The purpose of the organization?

Q. Yes, to gather money so that Mr. Gridley could write a book.

A. As to finance, furnish the finances, in order for us to handle this proposition.

Q. In order what?

A. For us to handle this proposition.

Q. As I understand it, it was in order that Mr. Gridley should publish this book?

A. Mr. Gridley agreed to publish the book, understand, to compile this for us, on the 8th of April, 1923.

Q. So that December 8, 1922, there was not any discussion relative to Mr. Gridley?

A. The only discussion relative to Mr. Gridley was as I stated this morning, they called on him—and your Honor would not let me finish the story.

Q. But there was some discussion at that meeting relative to their having called on him?

A. No, there was discussion that they had called on him.

Q. So that prior to any time that Mr. Gridley had any connection with this National Association, the Association itself had decided to publish a book?

A. No, the Association had not decided to publish a book, not, understand, at the formation of that organization on the 8th of December.

Q. Oh, they had not?

[1450] A. They had not, no.

Q. What did they decide at that meeting?

A. They decided,—they had called on Mr. Gridley, as I told you—they would not let me tell that story here this morning.

Q. You say that on December 8th, 1922, they did not decide to publish a book. Is that so?

A. No, I didn't say that.

Q. Did they or didn't they?

A. Not on December 8th they had not decided to publish a book.

Q. They had not?

A. No.

Q. So that the meeting of December 8th was not in connection with the publication of a book?

A. The meeting on December 8th was the formation of what they called a National organization.

Q. What purpose did they have in organizing?

A. That was to secure finances.

Q. For what? Finances for what?

A. Why, to bring this thing on to where—they would not let me answer, explain that to you.

THE COURT: I will let you answer it and tell the whole story, anything you want in.

A. Then I will tell the story as I know it.

Q. All right. Then on December 8th they met to get finances to do what? Now, tell us?

A. Is that the way you are going to—now, [1451] your Honor, do I understand you plainly, I shall tell the story as that committee had called on Mr. Gridley?

THE COURT: All right.

A. Mr. Jones, Brewer and Gardiner Spencer, Grover, called on Mr. Gridley to have it published, and he flatly refused to have anything to do with it. And then in the meantime he said he would give them the benefit of his experience, five years' experience in this, but he would not do any business with any of the heirs without he did business through the attorney, Grover, at Wilkes-Barre. I think that was the report that came to them, where we were assembled. Mr. Roat addressed the convention, and Mr. Roat made the statement on the platform there that

Mr. Gridley was the man that was going to see this through. I had never seen Mr. Gridley previous to that. The only thing I heard of was Gridley's name, and then, in April following that is when Mr. Gridley entered the picture, where I was concerned.

Q. All right.

A. Let me finish. He came to Wilkes-Barre. I seen him there, and Mr. Gridley then talked nothing about publication.

Q. All right, now, Mr. Booth, you say that at the meeting on December 8, 1922, Mr. Roat addressed the meeting?

A. Yes, sir.

Q. And said that Mr. Gridley was going to see this thing through?

A. He said Mr. Gridley was behind it, had [1452] consented to give them the benefit of his five years' experience.

Q. Of what experience?

A. Gridley will have to answer that question.

Q. Didn't he say anything about what, for what purpose?

A. No, he didn't say anything.

Q. I suppose nobody there asked him?

A. I know I didn't, no.

Q. Did you hear anybody else?

A. No, I didn't hear anybody else. I only heard him make this statement. He seemed very enthusiastic. He said this thing would have to go over, if he put up $1000.00 himself.

Q. Now you say that you had this attitude about this estate before you joined and you had it because of the tradition in your family about it?

A. Tradition handed down to us.

Q. What was your understanding of what that tradition was?

A. The understanding of it handed down to me, that that property in New York belonged to the heirs of Anneke Jans.

Q. That was the tradition that you had right up to the time you joined, wasn't it?

A. That was. I had it from childhood up.

Q. Now, Mr. Booth, if the thought in your mind which you had as a result of this tradition was that the property in New York belonged to the heirs, wasn't it your idea to get that property if it belonged to the heirs?

A. If there was anything there, understand, I would like to get in a legitimate way. Naturally, you would want it, wouldn't you?

Q. The tradition in your family was that there was something there?

A. Yes, sir.

Q. You wanted that something, whatever it was?

A. Whatever was due us.

Q. When first this matter came up for discussion with you, Mr. Gridley was there, as I understand your testimony, the talk was about a pamphlet being [1457] furnished?

A. First I heard was a pamphlet.

Q. I think you testified this morning that you did not feel that a pamphlet of 60 pages was going to do the job for you?

A. I cannot see how it could be—

Q. Could be what?

A. Produced by the stuff that would be required there.

Q. Required for what?

A. To put the heirs' side of this controversy before the public, public sentiment, publicity.

Q. What did you want to establish public sentiment for, do you know?

A. To protect ourselves from the ridicule and censure that had been going in for years, and tell the world our side of the story.

Q. You wanted public sentiment established for the purpose of blotting off or erasing the blots from your family escutcheon?

A. Or maybe better, as you said, to put the family right in the eyes of the world.

Q. How did this public sentiment affect you, Mr. Booth? Did it affect you in your business?

A. I am not in business.

Q. Well, at the time were you in business?

A. No, I was not in business at the time.

Q. How did it affect you?

A. I had always been held up to ridicule and [1458] censure and scoffing in the newspapers.

Q. Why?

A. Simply because we were claiming property there in New York.

Q. Did that bother you?

A. Well, if you have got a family tree, you don't want to be held up to scorn.

Q. I asked you, did that bother you?

A. It did not damage me any.

Q. Did it bother you?

A. Well, I had pride in my name, in my family, I did not want to be held up to ridicule and sneers.

Q. Sometimes were sneers and scoffs and things like that. Did anybody ever sneer at you because of your being an heir?

A. I have seen some pretty hot comments in the paper on it.

Q. Did anybody ever scoff at you?

A. Scoff at me?

Q. Yes. You say you did not want to be sneered or scoffed at?

A. No, but I was known as a descendant from the heirs of Anneke Jans.

Q. How were you known?

A. In the community in which I live, the community knows them things, you know, just as well as an individual knows that.

Q. The community knows you were an heir?

A. Yes.

Q. Why didn't you just tell them you were not?

A. What was the use of lying?

Q. To avoid the sneers and scoffs?

A. That is a poor way to take, isn't it? [1459]

Q. The first thing you heard about was a 60-page pamphlet?

A. Somewhere along that.

Q. How long did you remain a member of one of those organizations?

A. I remained a member of the National Committee until, I think it was somewheres in October, 1923.

Q. And then did you join some other organization?

A. No, I never became affiliated with any other, only I was Vice President of that organization, Mr. Hoover was President in the State of Pennsylvania.

Q. How long were you a member of that organization?

A. Well, I suppose about two years, the same as Mr. Hoover.

Q. You were elected Vice President—

A. In Chester.

Q. October 24, 1925?

A. Yes.
Q. You remained a member until June of 1927?
A. I think that is when they elected the new officers.
Q. At that time they elected new officers?
A. I think so.
Q. (By Mr. Watkins): Were you a member at the time you bought a book.
A. I cannot just—I ain't going to say, only I signed the subscription.
Q. You were not signing subscriptions to a book when you were not a member?
A. It was not confined to members, was it?
Q. I am asking you if you bought a book when you were not a member?
A. Yes.
Q. You are sure of that?
A. To my knowledge and belief that is true.
Q. So that you bought a book—
A. All these things, understand, I cannot carry in my head.
Q. You bought a book between October 1923 and October 1925?
A. I could not tell whether it was between them two dates or not, or whether it was later.
Q. It was not after June of 1927, that you bought the book, was it?
A. No, of that I am satisfied.
Q. You are positive of that?
A. I am positive of that.
Q. If it was when you were not a member of
[1472] any organization it was between October 1923 and October 1925?
A. Yes.
Q. That is true, isn't it?
A. Yes.
Q. And you are not sure whether you bought a book during that period or not?
A. I am not positive.
Q. You don't know—
A. When I bought the book, I am not positive.
Q. You don't know at the time you bought the book whether you were a member or not?
A. Between the two periods that you designate there I know I was not a member.
Q. I understand, but at the time you bought the book you don't know now whether you were a member or were not a member?
A. At the time I bought the book, I don't know when I bought the book, it was between them two periods I was not a member.
Q. You don't know now whether it was between those two periods?
A. I don't know now.
Q. So when you bought the book you may either have been a member or you may not have been a member?
A. If I bought the book between October, 1923 and 25 I was not a member, if I bought it between 25 and 27 I was Vice President of the State organization.
Q. You don't know when you bought the book, do you?
A. No, I don't know when I bought the book.
Q. So you don't know whether you were a member or whether you were not a member when [1473] you bought it?
A. I don't know whether if it was bought between those periods you designate I was not a member, if it was bought later I was Vice President of the State organization.
Q. I appreciate that.
A. That is plain enough, isn't it?
Q. You don't know when you bought the book, you don't know whether you were a member or not, do you?
A. Well, if I bought the book between these two periods I was not a member.
Q. There has been a change in the objects and purposes during the time that you were a member, hasn't there?
MR. McARTHUR: If the Court please, I desire to object to this because the testimony shows that there has been two organizations here. He says, "The organization." That may be referring to the last organization. It is a fair assumption that that is what he is referring to.
THE COURT: Take the answer.
Q. There have been changes in the plan since you joined up with this organization, hasn't there?
MR. McARTHUR: Which organization?
Q. The organization of these heirs.
A. Which organization?
Q. The organization to which you belonged.
A. There was a change, the old National organization, as I explained to you, from a pamphlet to a book.
[1474] Q. So that the old National, as I understand your testimony, first had up the proposition of a pamphlet and then they changed over to the publication of a book?
A. Yes.
Q. Now, Mr. Tefft, Mr. Roat, Mr. Jones, have all testified in this case that they went up to see Mr. Gridley in New York in September of 1923, I think the following month the National severed their connection with Mr. Gridley. Did they ever discuss that matter with either Mr. Roat or Mr. Jones?
A. I never got any satisfaction out of them.
Q. Did you ever discuss that?
A. We talked about it but it was never made clear to me.
Q. You never understood what they were talking about?
A. I understood what they were talking about. Is that the way you want to put it?
Q. That is the way we are talking about it.
A. The way I understand it was put to me that Mr. Gridley resigned in October, 1923.
Q. Who told you that?
A. Mr. Roat and Mr. Jones.
Q. Mr. Roat and Mr. Jones both told you?
A. Yes.
Q. Sure of that?
A. That was the discussion we had there, that he had resigned.
Q. Did they tell you why he had resigned?
A. That they could not furnish the finances to carry on this work. [1475]
Q. Mr. Roat and Mr. Jones told you that Mr. Gridley had resigned because the National could not finance him any longer, is that so?
A. They did not have the money to finance it.
Q. They told you that?
A. It was discussed between Gridley and Jones and Roat and that I never got.
Q. I asked you what discussion you had with Mr. Roat and Mr. Jones relative to why the National organization and Mr. Gridley split. Now did you have any discussion with them about that?
A. I just cannot give you the words on that—
Q. Without telling me what it was—did you have a discussion with Mr. Roat or Mr. Jones about that? Yes or no?
A. Well, there is some questions arising that you cannot answer yes or no. Did you know that?

Q. The question of whether or not you discussed this with Mr. Jones or Mr. Roat you cannot answer yes or no.

A. We discussed and talked the matter over.

Q. Who did?

A. Mr. Roat and Mr. Jones.

Q. What did Mr. Roat or Mr. Jones say in connection with that?

A. Mr. Roat and Mr. Jones, that Mr. Gridley was too slow, he was not progressing fast enough.

Q. Did you hear any discussion about a lawyer out here in Detroit at any time, did you ever hear the name
[1476] Lucking, an attorney by the name of Lucking?

A. Yes.

Q. What did you hear about him?

A. I think that there was some arrangements made by Mr. Gridley, Mr. Gridley was to meet Mr. Lucking.

Q. For what purpose, do you know? Did you hear that discussed, why he would meet, did you hear that discussed?

A. Mr. Gridley was to come to Detroit to see Mr. Lucking or to call on him, something to that effect, if I can get that right, there was numerous meetings held in Wilkes-Barre that I did not get to. I lived 150 miles away. I never met Mr. Tefft there but once.

Q. You remember that discussion, don't you, about Mr. Lucking here in Detroit, the lawyer?

A. There was discussion if Mr. Gridley was to come here and give Mr. Lucking what evidence or what he had compiled for this book.

Q. Evidence of what?

A. Evidence of what he had compiled for this book.

Q. You say he was to come here and give Mr. Lucking the evidence. The evidence of what?

MR. CHOLETTE: I object to that. It is all hearsay. The fact of this cross examination does not give him the right to discuss hearsay testimony with somebody else.

THE COURT: Overruled, bearing on his testimony in which he said no discussion of anything, only publishing a book. [1477]

MR. CHOLETTE: Take exception.

A. He was to come here to tell him what he was to publish in this book.

Q. What for, do you know?

A. For publicity in it.

Q. Was there any discussion as to why they should pick out Mr. Lucking to discuss the matter with?

A. Hearsay, this and that and the other.

Q. What did you hear about that in this meeting?

MR. CHOLETTE: I want to object to that, your Honor, for the same reason.

THE COURT: Overruled.

MR. CHOLETTE: I take exception.

THE COURT: Bearing on his credibility as a witness.

Q. Did you hear any discussion about that?

A. Mr. Jones told me that Mr. Gridley was to call on Mr. Lucking to show him what he had compiled for this work.

Q. You knew Mr. Lucking was a lawyer, had you heard that?

A. Only what Jones told me.

Q. You did not hear anything about Mr. Lucking being a book publisher?

A. I did not hear anything at all about it.

Q. What you heard of Mr. Lucking was that he was a lawyer here in Detroit? Did you hear anything about for whom he was a lawyer?

A. That he was Henry Ford's attorney.

[1478] Q. You knew Mr. Lucking was Mr. Henry Ford's attorney?

A. That is what Jones had told me.

Q. There was no discussion about Mr. Lucking being a book publisher?

A. No discussion on that that I know of.

Q. You say, as you understand it, Mr. Gridley was to produce for Mr. Lucking the evidence, is that right?

A. Evidence, no.

Q. You said evidence.

A. No. Mr. Lucking,—Mr. Gridley was to show Mr. Lucking what he had.

Q. For what reason?

A. To publish this book.

Q. Why would he show that to Mr. Lucking, Mr. Ford's attorney. Was there any discussion about that?

MR. CHOLETTE: Just a minute, I want to object to the question, your Honor, as entirely argumentative, I think, and hearsay testimony, entirely immaterial and irrelevant.

THE COURT: Overruled.

MR. CHOLETTE: Furthermore it is the witness' own conclusion and a thing that he has not been questioned about at all.

THE COURT: Overruled. I will admit it, bearing on his testimony, the entire understanding was about publishing a book.

MR. CHOLETTE: Take exception. [1479]

THE COURT: Overruled.

Q. From conversations you overheard in meetings in Wilkes-Barre you don't know whether Mr. Gridley saw Lucking or not?

A. It was so stated, he told me.

Q. It was so stated?

A. Yes.

Q. Who stated it?

A. Mr. Jones.

Q. Did anybody else talk about it?

A. I think Mr. Roat spoke of it.

Q. Didn't Mr. Roat say after the meeting that he had gone to New York to discuss the matter with Mr. Gridley?

A. What meeting was that?

Q. I say after the meeting between Mr. Gridley and Mr. Lucking didn't Mr. Roat tell your organization that he had been to New York along with Mr. Tefft and Mr. Jones to discuss the meeting that they had had in Detroit?

A. The three went to New York to call on Mr. Gridley.

MR. CHOLETTE: I object to the line of ques-
[1482] ing relative to what Mr. Jones said among themselves to this man after they had visited Mr. Lucking, as entirely hearsay and not binding.

THE COURT: You tried to put it in on direct. I excluded it, after the witness tried three times, and I let it in on cross examination.

MR. CHOLETTE: He didn't testify about it.

THE COURT: As to what Jones reported at the meeting. You tried to put it in. Finally I let it in. There are other things they reported, you claim you can put in on direct examination, part of the thing that Jones reported at that meeting, and then exclude the rest of it on cross examination?

MR. CHOLETTE: My recollection is that the witness insisted from time to time but the Court would not let him tell. The Court told him to go ahead, tell it. We had not anything to do with it.

THE COURT: You excluded on direct examination, on their exception, I excluded that before.

MR. CHOLETTE: I take exception.

THE COURT: Go ahead.

Q. You say you do remember that Mr. Tefft, Mr. Roat

and Mr. Jones did go to New York to see Mr. Gridley?

A. Yes.

Q. Do you know when that was?

A. No, I cannot tell you when that was.

Q. You say—

A. That must have been between the time Mr. [1483] Gridley was in Detroit and October 23rd.

Q. Between the time that he was in Detroit?—

A. When he came here to see Lucking, I don't know the date.

Q. It appears on the record that he came here along about the 9th of September, 8th or 9th of September, along in there, 1923. Now the meeting that you referred to, that they went to New York was about some time subsequent to that?

A. Some time after that.

Q. Yes, some time after that date. And it must have been between early in December, 1923 and October 25, 1923?

A. I beg pardon? You said December. You mean September?

Q. September, yes.

A. It must have been some time between that period.

Q. Why do you say that it must have been that?

A. Because I have been figuring this way: On the 23rd of October is when Mr. Gridley resigned.

Q. Of 1923?

A. Of 1923 if my memory serves me right.

Q. Did Mr. Roat ever discuss in your presence, or did Mr. Jones ever discuss in your presence anything that transpired at this meeting they had with Mr. Gridley in New York at that time?

A. No, not at that time, no. I didn't get any report on that.

Q. You did not know at all at that time why these two, Gridley and the National were severing connections? [1483½]

A. Everything that I knew, that I was called to Wilkes-Barre on the 23rd of October, 1923.

Q. And you went?

[1484] A. And I went.

Q. What happened?

A. We discussed there a letter. The contents I could not tell you. That they had from Mr. Gridley. What was in that letter, I can't remember, and I can't recall. It was the resignation of Mr. Gridley.

Q. How did you find out that Mr. Roat and Mr. Jones and Mr. Tefft had been to New York to see Mr. Gridley?

A. Mr. Jones communicated that to me that they were going down to see him.

Q. They told you that they were going to see him.

A. Yes.

Q. You never did know that they did go there?

A. No.

Q. Didn't you just testify that you knew that they had gone?

A. He wrote me to that effect; that they had got back from Detroit, Mr. Gridley had, and Mr. Tefft and Mr. Roat was going down to get the report.

Q. On what?

A. On whatever the result of that meeting was with Mr. Lucking and Mr. Gridley.

Q. Well, did you know what this report was to be about?

A. The result of their meeting.

Q. Was it to be about the publication of a book?

A. It was to be about what Mr. Gridley had compiled.

Q. Was it to be about the publication of a book, the report?

A. All I knew, Mr. Gridley connected it with the publication of a book. [1485]

Q. I will ask you whether or not the report that you were expecting from the meeting of Mr. Gridley and Mr. Lucking was to be about the publication of a book?

A. You could not derive anything else from it, because Mr. Gridley was talking about what he had compiled for this publication.

Q. So you thought Mr. Lucking, an attorney here in the City of Detroit, and a man whom you knew as Mr. Ford's attorney, was to be interested in whether or not they should, you heirs, should publish a book, is that it?

MR. CHOLETTE: Now, just a minute, I want to object to that for three reasons, your Honor. In the first place, it is argumentative. It calls for a conclusion. And it is hearsay pure and simple. Why should these respondents be bound by what this man thought would result from this discussion that he was not present at and does not know anything about except what somebody else told him.

THE COURT: Overruled.

MR. CHOLETTE: Take an exception.

Q. (By Mr. Watkins): Can you answer that?

A. State it again.

Q. You thought that the report of the meeting had between Mr. Gridley and Mr. Lucking, a lawyer here in Detroit, a practicing lawyer, whom you knew as the attorney for Mr. Henry Ford, was to be about the publication of a book.

A. It was represented to me as the attorney [1486] of Mr. Ford.

Q. Yes, whom you thought to be.

A. I did not know.

Q. You thought him to be?

A. Yes, I had communicated to me, the publication of a book, yes.

Q. So you thought Mr. Lucking would be interested in the publication of a book by these heirs?

A. I thought that Mr. Lucking—Mr. Gridley was to show Mr. Lucking what he had compiled.

Q. Why Mr. Lucking would be interested in it you never heard discussed?

A. The only discussion that I heard on that, the principal discussion, was that Lucking had been befriended by an heir to this estate, and he would look into it owing to what he had befriended it in early life.

Q. And you did not know this heir?

A. I did not know the heir.

Q. You did not know anything about that feature of it?

A. I did not know anything about it. It was just communicated to me.

Q. Mr. Booth, you say in this letter, "I have likewise understood prior to joining my Society that we are pledged to forget suits, actions, proceedings, settlements and the like pending the publication of this book."

Q. Where did you get that understanding?

A. That was the agreement that we had.

Q. Do you know why you were?

A. You know this as well as you are alive, you take for instance 25 ordinary people together, [1487] understand, from common ordinary walks of life, and a thing like this, some people exaggerate, and some people will think—if you will pardon the expression, well, I have met people already, met heirs already who would

stand up and tell me, "Hell, I would not publish no damn book."

Q. And some of them did not want to publish any book?

A. Some of them—they are not affiliated with this organization—they wanted lawsuits right off or nothing.

Q. Mr. Booth, did you ever hear any discussion with respect to Mr. Gridley being a disbarred attorney?

A. I heard of him being disbarred.

Q. Did you ever hear any discussion about it?

A. I heard different people, different heirs.

Q. Did you ever hear Mr. Gridley discuss it?

A. No, I never got the full explanation, no.

Q. You did not ever hear Mr. Gridley mention that fact at all?

A. The only thing he told me, he was a disbarred attorney.

Q. Didn't he give you any reasons why he was disbarred?

A. No.

Q. You did not know at all why he was disbarred from anything that he said?

A. Did not know why he was disbarred at all.

Q. You did not know that?

A. Only from hearsay.

Q. Well, how did Mr. Gridley happen to be [1488] talking about the fact that he was employed?

A. That is the first statement he made when he came to Wilkes-Barre, he was a disbarred attorney, and at the time of talking of that pamphlet at Wilkes-Barre then, Mr. Roat then discussed, they discussed reinstating Mr. Gridley.

Q. There was discussion at that meeting at which Mr. Gridley was in attendance at Wilkes-Barre relative to the reinstatement of Mr. Gridley, is that so?

A. They talked about that. Mr. Gridley did not bring it up. Mr. Roat apparently.

Q. But there was discussion at the meeting in Wilkes-Barre?

A. Yes.

Q. On the 9th of June or in April?

A. In April.

Q. The April meeting relative to Mr. Gridley's reinstatement, is that so?

A. Yes.

Q. And what was said in connection with his reinstatement at that meeting?

A. Well, he talked about the cost, or something like that.

Q. What did they say about the cost?

A. They estimated the cost of $2500 to $3000.

Q. What was the purpose in having Mr. Gridley reinstated? Was there any discussion about that?

A. Well, the discussion which they have had was that Mr. Gridley had been unjustly treated.

Q. Did you hear a discussion relative to the [1489] unjust treatment that he had received?

A. That is the only thing I heard, was unjustly treated. I don't know whether he was or not.

Q. Did they discuss the matter of how he was unjustly treated?

A. No, they did not discuss it. I did not hear Mr. Gridley open his mouth on it. I could not give you what the discussion was, what the words were, what the arguments were.

Q. And, in connection with the reinstatement which was to cost $2500 approximately, who was to pay for that?

A. What?

Q. Who was to pay that $2500?

A. We were to pay for it.

Q. And why was there any discussion? Why you were to pay $2500 to have him reinstated?

A. No.

Q. It was not to publish a book, was it?

A. To publish a book.

Q. You did not need a reinstated attorney to publish a book, did you? In other words, he could publish the book just as well whether he was a lawyer or whatever he was, couldn't he?

A. How could he publish it now?

Q. Well, at that time, he did not have to be a lawyer to publish a book, did he?

A. I suppose not necessarily a book publisher [1490] don't have to be a lawyer, but he was not a book publisher.

Q. He did not need to be a lawyer to publish a book, did he?

A. To publish the book that we wanted, it takes a man of some legal brains, wouldn't it?

Q. A man can have legal brains without being a lawyer, you understand, a practicing lawyer. You know that, don't you? Now, the Judge is not a practicing lawyer.

A. He is not a practicing lawyer.

Q. No, he is a Judge.

A. Evidently he had been at one time, hadn't he?

Q. So had Gridley. Why did you need to have a man reinstated in order to write a book?

A. That was just brought up there for that, but the expense would be too great, and I was never in favor of it.

Q. You never were in favor of spending $2500 to get him reinstated?

A. No, I would not.

Q. And what was the discussion in connection with this $2500? Why did they want him reinstated?

A. That is all there was to it, just discussed there, no definite reason.

Q. Did not give any reason why they would expend this $2500?

A. No.

Q. You say that you needed a lawyer to publish the kind of book you wanted, is that right?

A. I did not say we needed a lawyer.

Q. Didn't you say you needed a lawyer to [1491] publish the kind of book you wanted?

A. No, I did not say we needed a lawyer.

Q. When I was talking about reinstating Mr. Gridley, didn't you say that for the kind of a book you wanted, you needed a lawyer?

A. We needed legal brains.

Q. Well, why did you need legal brains to publish the kind of book you wanted?

A. The records that we would produce for that book.

Q. What kind of records? Records on what?

A. Records of the—the Provincial records showing, understand, how the heirs of Anneke Jans had been treated.

Q. In what way? Treated in what way? How?

A. As I told you, held up to scorn and ridicule.

Q. And you needed a lawyer to prove to you that you had been ridiculed and held up to scorn?

A. I did not say we needed a lawyer.

Q. Well, you needed one with legal brains?

A. We needed a man to know what we would put in the book.

Q. No, I do not. You needed a man with legal brains to

put in the necessary documents to prove that your antecedents had been held up to scorn, is that right?

A. It has always been held as a myth.

[1492] Q. Do you think it is a myth?

A. Do I think it is a myth?

Q. Yes.

A. It was handed down to me, and when this book is published, comes out, I will be satisfied then.

Q. Now, you think it is a myth, don't you?

MR. McARTHUR: If your Honor please, I desire to require the District Attorney to be more specific. He has referred to "it" as a myth. That is a very broad expression, it seems to me. He ought to be specific as to what he means by "it."

THE COURT: I think the witness put the "it" in it and not the United States Attorney.

Q. You think it is a myth now, don't you, Mr. Witness?

A. I cannot say now definitely. I could not make a decision of that kind. I think there was nothing to do or anything of that kind until we have our book published.

Q. So after the book is published, you think maybe there will be proof that you have got something?

A. That is not the object at all. It will prove to me then that the heirs of Anneke Jans have been unjustly treated.

Q. You are satisfied of that now, aren't you?

A. Well, that will prove conclusively to the world outside of that.

Q. You do not want the book to convince yourself. You want it to convince somebody else?

A. I want it to convince the public. [1493]

Q. So you are paying $25 for a book that will convince the public that the heirs of Anneke Jans Bogardus are not as silly as the newspapers say they are.

A. Yes, that they have been unjustly treated, and held to ridicule and scorn.

MR. WATKINS: That is all.

THE COURT: Do you claim descent through your mother?

A. What is that?

THE COURT: Do you claim to be a descendant through your mother?

A. Yes, sir.

THE COURT: What is her name?

A. Her name was Hanley.

THE COURT: That is her maiden name.

A. Yes, Hanley.

THE COURT: What is her given name?

A. Her what?

Q. What was her given name?

A. Rachael.

Q. How did she claim descent, through her father or mother?

A. Through her father.

Q. What was his name?

A. Hanway.

Q. What was his given name?

A. Ellis.

[1494] Q. How did he claim descent, through his father or mother?

A. Through his mother.

THE COURT: What was her name?

A. Holwell.

THE COURT: That is her last name?

A. That is her last name.

THE COURT: What is her given name?

A. Elizabeth.

THE COURT: How does she claim descent?

A. From her father.

THE COURT: What was his name?

A. Holwell.

THE COURT: What was his given name?

A. Joseph.

THE COURT: How did he claim descent?

A. You have got me up against a proposition. That is pretty hard.

THE COURT: How are you going to prove that you are an heir?

A. I have not got my genealogy complete.

THE COURT: You have only gone back four generations, then.

A. Four generations I have gone back.

THE COURT: How many does it take to get back to Anneke Jans Bogardus?

A. I suppose about seven or eight. [1495]

THE COURT: You have only got back half way then. You can only go half way back to her then, is that right?

A. Four generations, that is an assumption whether it takes seven or eight generations.

THE COURT: You do not know the name of your own ancestors back five generations then?

A. That is all.

THE COURT: You can't trace yourself back then? I say, you can't trace yourself back to Anneke Jans Bogardus?

A. I think I can if I get a genealogist.

THE COURT: You never did that?

A. No.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. McARTHUR:

Q. Mr. Booth, you have always believed that as a matter of tradition in your family though, that has been handed down from generation to generation that you are a descendant of Anneke Jans Bogardus?

A. Always; otherwise I would not have been here.

Q. That has been handed down in the family from generation to generation?

A. Yes.

Q. And that is the way you got it?

A. That is the way I got it.

[1496] Q. Have you seen the boomerang?

A. No, I have not.

Q. You do not know then as to whether or not there is any of the ancient genealogy published in that?

A. Only what I heard said.

Q. Would you be interested in a book that contained the genealogy that connected you?

MR. WATKINS: I will object to it as incompetent, irrelevant and immaterial.

THE COURT: Excluded.

MR. McARTHUR: Exception.

Q. There has been something said on cross examination about the resignation of Mr. Gridley. You have been questioned about that. Did you ever hear Mr. Jones say why it was that he resigned? Was it anything in connection with his coming up here accompanied by Mr. Jones and taken in to Mr. Lucking's office, anything about his being tricked?

A. No, I can't say that I do.

Q. Did you ever hear Mr. Gridley say anything about that, why he resigned.

A. Why he resigned?

Q. Yes.

A. The only understanding I had, why he resigned, that they were too slow, they did not furnish the stuff that they agreed to furnish. [1497]

Q. Did you ever hear him say anything about some of them having a notion that they were fostering a lawsuit?

A. What?

Q. Some of them having a notion that they were fostering a lawsuit?

MR. WATKINS: I will object to that until you state who it was, if you claim it is the respondents, and when and where.

THE COURT: Sustained.

MR. McARTHUR: Exception.

Q. This Lucking meeting that you speak of here that Mr. Jones took Mr. Gridley to, did you understand that Mr. Lucking was a moneyed man?

A. No. [1499]

Q. A man of means?

A. All I knew of Mr. Lucking was just as I said, was Mr. Lucking was Henry Ford's attorney, and naturally would assume he was a big man, and as I stated here that why he was interested was because he had been befriended in early childhood or early manhood by somebody who was an heir here.

Q. Then one of the heirs, as you understood, was trying to get him interested in this book, is that it?

A. Well, it was represented to me that way.

Q. And you did not know whether he was going to finance the publication of the book or not.

A. I did not know anything about that.

Q. You did not know why he was taken there at all.

A. No.

Q. You did not know but what he could become a book publisher, did you?

A. Did not know what?

Q. You did not know but what he could become a book publisher, even though he was a lawyer.

THE COURT: That is leading.

MR. McARTHUR: Yes, sir, slightly.

Q. And you do not know what Mr. Lucking's object was in having him come to his office at all?

A. I do not know whether Mr. Lucking requested him to come or anything at all about that.

Q. And you do not know what Mr. Jones' [1500] object was in having him go to Mr. Lucking?

A. No, I could not say definitely what it was.

Q. Whether it was to discuss legal matters, or whether it was to discuss the publishing of a book or finances, or anything of that kind.

A. I don't know anything about that at all. All I know, Mr. Gridley was to call on Mr. Lucking and show him what he had.

Q. Now, you stated too in your meetings that you held down in Pennsylvania, on cross-examination, you said something about some of them saying something about the lawsuit. I will ask you if the first time that was approached when Mr. Gridley was there if he did not knock it in the head?

A. Mr. Gridley always discouraged that talk.

Q. The minute he heard of it, he said "Lay off that idea?"

A. Yes, sir.

Q. Now, there was something said about a first discussion about issuing pamphlets. Do you recall as to whether there was a discussion also that those pamphlets would be issued in series?

MR. WATKINS: I will object to all these leading questions.

THE COURT: Let him tell how he knocked that in the head.

Q. Go on and tell how Mr. Gridley knocked [1502] the discussion, any discussion about financing the lawsuit. How did he knock it in the head, or how did he discourage it?

A. Why, Mr. Gridley came out and made the statement flat to them there and told them, he said, "There is no use of going into this thing at all unless you first publish the heirs' side of this story." That is the only thing that you had.

THE COURT: Go into what thing?

A. What?

THE COURT: No use of going into anything until you publish the story, go into what thing?

A. That he would not go into it.

THE COURT: Into what?

A. Having anything to do with this outside of the publication of a book.

THE COURT: You said until he published a book. That is what you said.

A. If I did, I got in there—I did not say what I meant to say.

Q. (By Mr. McArthur): You knew that he was a disbarred attorney, and he could not do anything in a lawsuit?

A. I knew that he was a disbarred attorney.

THE COURT: Well, when he got undisbarred, and paid that $2500, he would be all right, wouldn't he?

A. I did not have the finances.

MR. McARTHUR: They never did do that, and never attempted to do that.

A. They never did do that. [1503]

THE COURT: Who said they could get him reinstated for $2500? Who was it said that?

A. That was the discussion among them people there themselves.

THE COURT: He was there.

A. He was there. Mr. Gridley did not say anything about being reinstated.

THE COURT: You say some of those other people there said Mr. Gridley could be reinstated for $2500. Wasn't it Gridley that said it?

A. I do not know whether Mr. Gridley estimated that amount or not, or whether it was Mr. Grover; that I could not say.

THE COURT: Which one do you think it was?

A. I don't know.

Q. (By Mr. McArthur): You were saying something about pamphlets. I will withdraw that. I will ask you if there was not some discussion at one or the other of those two meetings that you speak of that was held at Mr. Roat's office or store that Mr. Gridley had not been treated right by the Society, the family.

MR. WATKINS: I will object to that as incompetent, irrelevant and immaterial and leading.

THE COURT: Sustained.

MR. WATKINS: If there was any discussion, let him tell what the discussion was.

Q. (By Mr. McArthur): Well, can you recall [1504] any other discussion that you have not related already about either of those two meetings?

A. No, I cannot.

Q. All right, now you have spoken about these pamphlets and the different plans that were suggested at the first meetings down in Mr. Roat's store, and you have stated that there was a discussion first about issuing pamphlets, information in the way of pamphlets. I will ask you if there was not a discussion about issuing those in series.

MR. WATKINS: I will object to that as being incompetent, irrelevant and immaterial and leading.

THE COURT: Sustained.

MR. McARTHUR: They brought that out, your Honor. Note an exception, please.

Q. (By Mr. McArthur): Now, you also stated that you knew that the family has been ridiculed and pointed out as crazy and fanatics and you were interested in securing something that would clear this up. Was that true?

A. That would set it right in the eyes of the world, the public.

Q. Would that be worth the price to you as an individual?

MR. WATKINS: I will object to that as incompetent, irrelevant and immaterial, what it would be worth to him.

THE COURT: Sustained.

MR. McARTHUR: Exception.

Q. (By Mr. McArthur): You said on cross [1505] examination also that Mr. Gridley refused first to have anything to do with it.

A. Yes.

Q. Whatever that "it" was. Now, when was it that he made that refusal? You had just related that these men had gone down to New York and talked with Mr. Gridley and came back and so reported that at first he refused to have anything to do with it.

A. That was when they first called on him, yes.

Q. Then, when he came down to the Roat store, this pamphlet proposition was approached, was it?

A. Was approached?

Q. From that time he came in Mr. Gridley then told them about publishing a book.

A. Publish the full side of the heirs' side of the story, that was it.

Q. And they discussed different plans by which that publicity could be gained, didn't they?

A. Yes.

MR. WATKINS: I will object to that as leading and ask to have the answer stricken out.

THE COURT: Sustained.

MR. McARTHUR: Exception.

Q. They finally did, the minds of those parties there then did meet upon some point.

MR. WATKINS: I will object to that, be- [1505½] ing incompetent, irrelevant and immaterial, and not within the knowledge of this witness.

THE COURT: Excluded.

[1506] Q. (By Mr. McArthur): Were you present at the discussions that were going on in Mr. Roat's office?

A. When?

Q. At the second meeting, both of those meetings? You were present at both meetings in Roat's store?

A. I was present at a meeting in April and a meeting in June.

Q. And you were present at those discussions, were you?

A. Yes.

Q. I will ask you if you did not finally arrive at some plan of publication?

MR. WATKINS: I will object to that as incompetent, irrelevant and immaterial. If they arrived at any plan, the plan is the best evidence.

MR. McARTHUR: It may be a verbal plan.

MR. WATKINS: You have been talking about a contract.

THE COURT: You have been talking about two meetings.

Q. (By Mr. McArthur): I will ask you about the first meeting then. At that meeting, was there anything arrived at as to what your plans should be?

A. The plans to be the publication of the full history of this case, of this controversy that had been handed down to the heirs from generation to generation, the unjust treatment that they had got, and publish them and give the public, let the public know just how the heirs have been treated.

Q. Was that to be at that time in pamphlet or book form?

A. Well, they started advocating the pamphlet, but they found it was too small. They [1507] could not get anything in it to amount to anything.

THE COURT: Answer the question. They found that out at that meeting. He asked if they reached an agreement at that meeting.

A. No written agreement.

THE COURT: Then you say they found out it was too small and they enlarged it at that meeting?

A. Well, not at that meeting, after that meeting in April.

Q. (By Mr. McArthur): Well, the first talk was a pamphlet, and they agreed, did they, that that was not sufficient?

A. It was not sufficient.

Q. Then they finally arrived at a small book, is that it?

A. At a book.

MR. WATKINS: Your Honor, I think the attorney is doing more testifying than the witness.

THE COURT: I will exclude it. You are just going over it and putting your own words in his mouth, after he has gone all over the subject.

MR. McARTHUR: I am getting rather parrot-like, your Honor. I have heard the District Attorney so much I am trying to imitate him.

THE COURT: There is a difference in witnesses, whether they will be led or whether they will not be led.

MR. McARTHUR: That is all.

RECROSS EXAMINATION

[1508] BY MR. WATKINS:

Q. Now, Mr. Booth, you do remember now some discussion about this disbarment proceeding?

A. Which disbarment proceeding?

THE COURT: There is only one in the case. You know which disbarment proceeding. There has only one been talked about.

Q. (By Mr. Watkins): You remember now that there was discussion by Mr. Gridley?

A. I remember it. I said Mr. Gridley was a disbarred attorney.

Q. You also testified, didn't you, just a moment ago upon questions being asked you by Mr. McArthur that you remember that was disbarred in connection with—

A. Yes, you did not ask me that, what case. I knew that. I knew that he was disbarred through being appointed by the Court to defend Fonda.

Q. Is that what Mr. Gridley told you?

A. I did not know it. That is what Jones told me.

Q. Jones told you that?

A. Yes, that is what they had told me there. That was the common talk.

Q. Was Gridley there at that time?

MR. CHOLETTE: Just a minute, I would like to ask that the answer that Jones told him that be stricken out as hearsay.

THE COURT: I will leave it in, because the defendant's counsel asked him first to state what [1509] these people reported to him as to their interview with Gridley, and I then sustained it, but later on the witness repeatedly offering it and stating a desire to relate that, I let him state what they reported. Now I will let him tell all that they reported.

MR. CHOLETTE: Exception.

Q. (By Mr. Watkins): Mr. Booth, haven't you testified that when Mr. Gridley was present there in April of 1923 in Kingston, Pennsylvania, at Roat's store that there was discussion about his being a disbarred attorney?

A. Well, I don't know as—I could not say general discussion, but Jones and I had talked of that, and I think Mr. Roat and I had talked of that. We came to no agreement or anything of the kind.

Q. Didn't you say that at that meeting Mr. Roat explained that Mr. Gridley was a disbarred attorney?

A. A disbarred attorney, and that Mr. Roat—now when we brought it up that way, Mr. Roat said, Mr. Gridley was disbarred owing to the defense of Gridley—of Fonda.

Q. Was Mr. Gridley present at that time at that meeting?

A. Mr. Gridley was at that meeting. Whether he was present when that discussion was going on, I could not say.

Q. But was there any discussion at that meeting as to why he was disbarred?

A. The only discussion was, understand, I was led to believe and so believe today—I have never been [1510] enlightened—that he was disbarred owing to the defense of Fonda.

Q. Did you ever at any time hear anything about any perjured testimony on the part of a witness?

A. No, I did not.

Q. You never heard about any witness swearing falsely in connection with his disbarment?

A. No, not the discussion in the meeting.

Q. There was discussion about Mr. Gridley being reinstated, you said?

A. That is they just merely spoke of it there.

Q. And was there a discussion as to how he could be reinstated?

A. Not general, no.

Q. Did you hear any discussion relative to an affidavit existing which would prove that someone had sworn falsely against him?

A. Only in an offhanded talk, that was all. It was not discussed at the meeting.

Q. You did hear that discussion?

A. The only way I got that, I think I got it from somebody in a general conversation.

Q. So that you have heard that?

A. I heard that, yes.

Q. And you say now that you don't remember just who it was that said it would cost $2500 to have him reinstated? You do not know whether Gridley said that or somebody else?

A. I could not say whether Gridley said that or somebody else said that.

Q. It may have been Mr. Gridley, so far as [1511] you remember?

A. I could not say whether it was or was not.

THE COURT: Did he deny it?

A. What did you say?

THE COURT: It was said by somebody that was there, as I understand, and somebody present there in the meeting said that.

A. Something came up like that, you know.

THE COURT: Did Gridley deny it when they said he could be reinstated for $2500?

A. No, I am pretty sure, I would not say positively. Mr. Gridley was not in the discussion. I don't think he took part in the discussion.

THE COURT: You don't think what?

A. I don't think he took part in the discussion.

THE COURT: He just stood there and listened to it?

A. I think so.

THE COURT: Just stood there and listened and did not have any comments to make about it, is that it?

A. Well, I could not quote what he did say, if he did say anything.

THE COURT: But it is your best memory that Gridley stood there and did not say anything and the others present talked about him being disbarred and he did not make a single remark about it. That is your best memory?

A. Your Honor, if he did say anything I could [1512] not quote what he did say.

THE COURT: You do remember that it was talked about?

A. If that thing should have been right, they should have kept the minutes of that proceeding, shouldn't they?

THE COURT: I don't know, Sunday afternoon, they go into a clothing store and visit a little, I don't know whether you would need to get a stenographer and take minutes.

REDIRECT EXAMINATION

BY MR. McARTHUR:

Q. Now, witness, did you ever hear of the [1516] Killian letter dated March 9th, 1927, at the time that communication was sent in?

A. Yes, I heard of that.

Q. That was just a short time before this was sent in, was it, the Killian letter?

A. I think it was.

Q. Did you ever hear of the "Appeal to Justice" in which these things were pictured in the "Appeal to Justice," the picture of, photostatic copies of letters that had been opened? Did you see that?

A. I heard of them.

Q. Did you hear that the mail of your secretary, Mr. Pierce, did you hear of that having been opened?

MR. WATKINS: I will object to that as leading. There is no testimony in this record to that effect.

A. No, I did not hear of Mr. Pierce's.

THE COURT: Sustained. He says now the reason he approved of that letter was because he had heard of the mail of Gridley and Mrs. Wright being tampered with. He says that is the reason that he signed it and the thing he supposed it referred to. You are leading him to tell some other things.

MR. McARTHUR: If your Honor please, it seems to me I have a right to refresh his recollection.

THE COURT: You are leading this witness.

MR. McARTHUR: Here is a witness who has testified that he came here last night.

MR. WATKINS: He said he came yesterday morning. [1517]

MR. McARTHUR: Yes, yesterday.

MR. WATKINS: You had 24 hours to work on him.

MR. McARTHUR: Well, does the Court rule that I have not a right to refresh his recollection?

THE COURT: He has given his reason why he did that. You can't change that. He says that the reason he approved of that in the letter and what he supposed it referred to was the tampering with Mr. Gridley's mail; that he had heard that Mr. Gridley's and Mrs. Wright's mail had been tampered with.

MR. McARTHUR: Does your Honor rule that I can't refresh his recollection about any other incidents?

THE COURT: I will let you ask him if he had any other, but you cannot say, "Wasn't it this?" or Wasn't it that?" when he has said just what it was.

MR. CHOLETTE: Your Honor, I would like the record to show an exception to Mr. Watkins' statement made a minute ago about working on him.

THE COURT: It is too late. I have forgotten and the jury have. You come too late.

MR. CHOLETTE: I will call the Court's attention to it.

THE COURT: You had better not, or you will remind the jury of it. If it is prejudicial and you mentioned it in their presence, you will renew it, if it is harmful.

MR. CHOLETTE: I am not so sure the jury has forgotten it, and that is why I want to take an exception to it. [1518]

THE COURT: All right, if you want to bring it up in the presence of the jury, I will hear you.

MR. CHOLETTE: I have taken my exception. That is all I wanted.

THE COURT: I don't know what it refers to, so I can't rule on it.

Q. (By Mr. McArthur): What if anything have you heard about Mr. Pearse's mail being tampered with?

MR. WATKINS: I will object to that as leading. If he has heard about anybody else's mail, let him tell it.

THE WITNESS: I did not hear it.

THE COURT: The objection is sustained.

Q. (By Mr. McArthur): Then did you see anything in the "Appeal to Justice" that refreshed your recollection about it?

A. Can I answer that?

Q. He has not objected, so I assume that you can.

A. State that again, will you?

Q. Did you see anything in the "Appeal to Justice" that refreshed your recollection?

MR. WATKINS: If there is any "Appeal to Justice" I submit that there is no record in this case of any "Appeal to Justice," I do not know about this appeal to Justice.

THE COURT: I will sustain the objection.

MR. McARTHUR: That is all.

MR. WATKINS: That is all.

THE COURT: We will take a five minute recess. [1519]

IDA FOSTER, was thereupon called as a witness on behalf of the United States, and having been first duly sworn, testified as follows:

Q. Did you at any time join an association made up of the heirs of Anneke Jans Bogardus?

A. I did.

Q. Where did you join?

A. Milwaukee.

Q. In connection with your membership in that society, did you have occasion to see either of the defendants in this case, Mr. Gridley or Mrs. Wright?

A. I saw them both. I think it was in the hall of the Young Men's Christian Association.

Q. Have you any idea how many people were present?

A. I should say three or four hundred people.

Q. And what were the cirmcumstances, Miss Foster, under which you went to that meeting? How did you happen to attend it?

MR. CHOLETTE: I think, your Honor, that would be immaterial and irrelevant. It is so broad, it covers such a broad territory, it is dangerous testimony.

THE COURT: Overruled.

MR. CHOLETTE: I will take an exception, your Honor.

Q. You may answer the question. How did you happen to go to the meeting?

A. Why, I think notice was sent that Mr. Gridley would be there and speak to the people. I am not positive of that, whether it was in the papers that I saw it or whether it was sent to me separately. I would not say as to that, because I cannot.

Q. All you know is that you received some notice from some source or other that Mr. Gridley was to address a meeting?

A. Yes, sir.

Q. By the way, Miss Foster, what is your occupation?

A. Teaching in the public schools of Milwaukee.

Q. Did Mr. Gridley speak at such a meeting?

A. Yes, sir.

Q. Will you tell us, in a general way—I will withdraw that. Approximately how long did he speak, if you remember?

A. I could not say, I don't remember.

Q. Well, would you say it was five minutes or longer?

A. Well, perhaps five to ten minutes, something like that.

Q. And do you remember at all the substance of his talk?

A. Well, it was in regard to the publishing of a book that would establish our right to the Trinity property. In that would be evidence, as I understand it, by which we could establish our right.

Q. And by establishing your right, what do you mean?

A. I mean—

MR. CHOLETTE: Just a minute, I think that her interpretation or understanding of what she meant is not proper, your Honor. She could give what was said.

THE COURT: Yes, as nearly as you can. If you cannot tell what was said, give the substance of it.

A. I can't give his words.

THE COURT: Well, then, give the substance of it, as near as you can, what he said.

A. Well, I do not feel even positive in that. I would rather not say.

THE COURT: Well, it is not a question of what you want. We have not invited you over here for your enjoyment.

A. Certainly not.

THE COURT: You are to tell that conversation as nearly as you can remember it. That you must do, whether you want to or not.

A. I will do so to the best of my ability.

THE COURT: Just proceed and tell what was said, as nearly as you can remember it.

A. Why, as I said, he spoke and said that there was property there and by the evidence or things that he had that would go into that book, we could establish our ownership, our right to it.

Q. And by "our" you mean what?

A. All the heirs.

Q. (By Mr. Watkins): You say this was, as you remember it, in July, 1926?

A. Yes.

Q. I will ask you whether or not Mrs. Wright made any talk at that meeting?

A. She did, but I couldn't tell you one word that she said.

Q. Don't remember anything that she said?

A. No I know that she talked, but I sat in the back part of the room and I could not hear very well.

MR WATKINS: That is all.

CROSS-EXAMINATION

BY MR. CHOLETTE:

Q. Mrs. Foster, you have lived in Milwaukee for a long time?

A. Yes.

Q. And I believe you told us you were a school teacher there?

A. Yes.

Q. What is your address in Milwaukee by the way?

A. 151 13th Street, Apartment 7.

Q. I suppose that was the first time you saw Mr. Gridley and Mrs. Wright, is that right?

A. No, sir.

Q. Did you say you saw them at any other time?

A. I saw them later in the year, I think it was the latter part of October, or some time in October, or very early in November, I think October though.

Q. 1926?

A. Yes.

Q. Was that also in Milwaukee?

A. Yes.

Q. Now, this talk given by Mr. Gridley—you don't remember very much about it, do you, Mrs. Foster?

A. No, sir, I don't. It is just as I have told you.

Q. You know, though, there was some talk about the publishing of a book?

A. Yes.

Q. You don't recall any talk about any lawsuits or litigation, do you?

A. Not to my knowledge.

Q. As far as what was said by Mrs. Wright, you don't know anything about that at all? You did not hear it?

A. I didn't hear enough to get anything connected.

Q. Were you a member of that Society, Mrs. Foster?

A. Yes, sir.

Q. When was that Society organized?

A. I was not in the Society until after it was organized, and I can't tell you the date.

Q. You joined in 1926 as far as you are concerned?

A. Yes, as far as I am concerned.

Q. Were you ever an official of that Society?

A. No, sir.

Q. That Society was organized, as far as you know, by some of the heirs of this Bogardus estate?

A. Yes.

Q. Can you give us some idea whether it was in 1923 or 1924 that it was organized?

A. Oh, no, I don't think it was as early as that. I think it was somewhere in early 1926, or late 1925, but I think 1926. But it was organized before I had anything to do with it.

Q. Don't you remember that in that talk of Mr. Gridley he stated that the purpose of the book was to show the history of this alleged ownership of this property?

A. I understand that it was to show—to contain evidence or things that would establish the heirs' right to the property.

Q. Do you remember his telling about the maps and deeds and so, some of which had never been signed by any of the heirs?

A. I didn't hear him say it.

Q. You didn't hear anything like that?

A. No.

Q. Do you remember anything said by him as to the publishing of this book, affecting public opinion?

A. Yes.

Q. You heard about that?

A. Yes. He said it would affect public opinion.

Q. But you don't remember anything said about any lawsuits or litigation?

A. I didn't hear him say anything.

MR. CHOLETTE: That is all.

MR. WATKINS: That is all.

MR. CHOLETTE: Mr. Watkins, is this witness going to be excused?

MR. WATKINS: Yes. Do you want her back again?

MR. CHOLETTE: I would like to ask her one question, if she has not gone away.

Q. (By Mr. Cholette): Mrs. Foster, I forgot to ask you when you joined this Association, did you sign a pledge or questionnaire?

A. I did.

Q. Of course, you haven't got that here, have you?

A. No, I haven't a copy of it. I never had a copy.

Q. That was left with the Society?

A. The only one I know anything about was sent in. I suppose you have it there.

Q. No, I haven't. I will ask you however, without introducing this, whether—

A. I will have to put my glasses on to see what I am looking at.

THE COURT: If you are going to show her anything, I would prefer that you have it marked, so that we will know what we are talking about.

MR. CHOLETTE: I will have it marked for identification only, your Honor, because it is not her signature.

THE COURT: Exhibit 13.

(The document was marked Exhibit 13.)

Q. (By Mr. Cholette): Mrs. Foster, are you able to tell us whether or not the questionnaire that you signed up was one like this one here? Just look that over (handing Exhibit 13 to the witness.)

A. I think so.

Q. Your best judgment would be that you signed a questionnaire containing several questions which were the same as these?

A. Yes.

Q. Of course, I don't suppose the questionnaire you signed had a letter inside of it like this one?

A. No, sir.

Q. But the questions, as well as you can recall them, were the same?

A. (The witness nods in the affirmative.)

Q. You nodded. Your answer is "Yes," is that correct?

A. Yes.

Q. Now, Mrs. Foster, did you know that all of the members, when they joined the Association, did sign a questionnaire?

A. Why I suppose so. I don't know. I only know about myself.

MR. CHOLETTE: That is all.

236

MR. McARTHUR: If your Honor please, I desire that an exception be noted to each one of these rulings of the Court pertaining to this witness as to this questionnaire.

THE COURT: It may be.

REDIRECT EXAMINATION

BY MR. WATKINS:

Q. Mrs. Foster, let me ask you this question: In connection with this book proposition, did you pay for a book, or order a book?

A. I ordered a book and I paid $15 on it. The rest, I never paid.

Q. And this is the book that you referred to, that Mr. Gridley discussed?

A. Yes.

MR. WATKINS: That is all.

MR. CHOLETTE: That is all.

THE COURT: Do you want to ask her whether she got the book, if she ever did?

Q. (By Mr. Watkins: Did you ever get a book?

A. No, sir.

MR. WATKINS: That is all.

Q. (By Mr. Cholette): Mrs. Foster, who was this money paid to?

A. The treasurer of the Society.

Q. You never paid any money to Mr. Gridley or Mrs. Wright?

A. No, sir.

VIEW IN NEW YORK, 1746.
(Lower Market)

The Following Pages Contain:

First.

Letters Written by Mrs. Hannah Grow Lutz Before She Severed Her Connection With the Interested Organization.

Second.

Papers Prepared by Mrs. Lutz, After She Severed Her Connection With the Interested Organization.

It is to be noted as regards this paper, Mrs. Lutz states, "I have had the following instructions, 1st, to keep it confidendial, until you approve it, and succeed with your part of the proposition;" thereby acknowledging that she was being directed in this move. Question: Who?

Mrs. Lutz further states: "It is true Mr. G. cannot do anything further for us than the book, and it seems to me a wise move not to let the book go on the market until this question of case or trial business is settled.

In this paper, to which Mrs. Lutz and her followers appended their signatures, you will note it states:

Q. What is the main part of this great cause that does or will interest you most?

Ans. A settlement or suit which will be in our favor.

Q. What is the book worth to you?

Ans. Without a case or suit, not fifty cents.

Q. Have we a promise of a suit?

Ans. No.

Q. What will happen if the book goes on the public before a suit is prepared and filed?

Ans. Spells failure, because you are giving the enemy your facts and proofs that they may be able to appear against you.

Q. What must we do?

Ans. We must see that some suit is prepared and filed.

Q. Knowing that Mr. Gridley cannot and will not take any such actions, who will do it?

Ans. We must secure the services of two attorneys who will be willing to confer with Mr. Gridley.

Third.

Copy of Letter Written by H. M. Hoover, State President, Regarding Advance Book Subscription Funds Held by Hannah Grow Lutz.

Fourth.

Statement by a Former Member of Mrs. Lutz' Society, Charles C. Falck.

Question: Did This Government Witness Commit Perjury?

Plate Sixty-nine.

WILLIAM POST, President
Delmar Street

HAN . Secretary
343 Fountain Street

W. WEAVER, Treasurer
4124 Lauriston Street

HEADQUARTERS OF NATIONAL COMMITTEE
OF
ANNEKE JANS BOGARDUS HEIRS
WILKES-BARRE, PENNA.

PHILADELPHIA BRANCH
343 Fountain Street
Roxborough, Phila., Pa.

Roxborough Phila,
Sept 26, 1923

Mr. Robert Jones,
Mr. G. Murray Road.
Dear Sir: I understand that Mr. G. has tendered his resignation to the National Committee. What has caused him to do so? The officers of the Phila. Branch and Members will not hear to it and advise its return and some agreement made to have him remain with the work. When would we get a man with his experience, why all we have put in the work would be lost and perhaps it would be never taken up again.
If Mr. G quits you will get no further financial help from us.

Very truly yours
Hannah Grove Duty Secty

Copy

Plate Seventy

A Copy of a Letter from the Philadelphia Branch to G. Murray Roat

Roxborough, Philadelphia, May 17, 1924.

Mr. G. Murray Roat,
Kingston, Pa.

Dear Sir:

I am continually hearing reports about you from all sections of the United States. It seems to me you have done enough damage. First, you refuse to make an itemized statement of moneys paid to you by heirs and give an account of your expenditures. Second, you behaved in such a manner that caused our New York man to send in his resignation. Third, you went over to New York to set things straight, and didn't you send me several obnoxious letters previous to your visit and after your interview sent me the telegram, "at conference here" (meaning New York), "everything O. K.," and which was false. Fourth, you refused to put in writing your interview and sign same. Fifth, the fatal October 13, 1923, midnight meeting.

You were the cause of the breaking up of the National committee and then went into hiding until now you come to help. In March you went to New York with Mrs. Hanway and failed to find the boss; you went to Jackson, Michigan, and like many other times, tried to pull over another bluff. You would give Mr. G. $15,000 for the book if he would do so and so. Even on the fatal 13th of October, 1923, you said you would write a check for $5,000 or $10,000, and that was another bluff, and now again you are only giving and making more "Gas Bags." How much money did you put into this movement? Not a cent, to my knowledge. Now you want to recover the books and papers bought with the National money. Whose money is it? "Yours?" What right have you to the books and papers, etc., then?

I sent you $1,121.00 and quite sure have more right than you. I sent you that much money to further the cause and you refused an itemized statement and never showed us what you were doing with the money the heirs sent you. You laid all blame on the New York man, yet you didn't show it in a statement. You said to me in your office you didn't believe in giving an attorney all the money he asked for. What did you do with the money the heirs sent you? (No statement.) When you hire an attorney do you tell him how to do the job? If so, what do you hire him for? Does he show you his work part finished or half finished? You know as well as I do you did not give Mr. G. any more money than his overhead, except the $5.00 for expenses at the June 9th meeting and this was agreed to be an ever ready standing fund that he could draw upon when he needed money to forward the publication of our book.

Was that the agreement the National made with him? Where is our money? Send me back our $1,121.00 and send all other societies theirs if your offer of $15,000 worth of help is good. It looks to me as if you wanted to clear yourself; well, here is your chance. I just received a letter from a person that you think is a friend of yours; perhaps he is carrying water on both shoulders; he says he thinks you would join our movement if someone would ask you. Who wants to ask you? You never showed that you put any money in it yourself and how many letters did you get asking you to resign as President of the National, thus the National fell to pieces.

Our Philadelphia heirs are tired to death with your bluffs, gas bags, falsehoods, obnoxious letters, etc. Now, if you want to clear yourself, be a gentleman, do the right thing. Make out an itemized statement and send it to all heirs and send me a bank draft of the money on hand, or balance. If found correct I will accept it and deposit it to Mr. G.'s credit, on behalf of all heirs, and then you can go in hiding again. Now is your chance, once and for all, before our people take it in hand. A copy of this will be sent to all who sincerely want our book published without interference, and are awaiting your reply.

Let me hear from you at once.

Sincerely for the Cause,
Hannah Grow Lutz,
343 Fountain Street,
Roxborough, Philadelphia, Pa.

TO THE HEIRS

Should Mr. Roat give out a statement to this letter let every heir check up and see that the statement is correct with the amount he or she paid. If not correct, kindly notify the Philadelphia Branch of the error and we will *not* accept his statement and bank draft. Now go to it, as we mean business, we want our money put to the use for which it was collected and not held by one man bearing interest. If he fails to make a reply let every heir make a demand on this person for what belongs to that heir.

Plate Seventy-A

Please see that these letters are distributed among your members, if you need more send at once and you can get as many copies as you may need

Phila Branch

Mrs Grace L. Case
522 E. Main St
Battle Creek
Mich.

9

[illegible] and deposit it to Mr. G's credit, on behalf of all heirs, and then you can go in hiding again. Now is your chance, once and for all, before our people take it in hand. A copy of this will be sent to all who sincerely want our book published without interference, and are awaiting your reply.

Let me hear from you at once.

Sincerely for the Cause,
HANNAH GROW LUTZ,
343 Fountain Street,
Roxborough, Philadelphia, Pa.

TO THE HEIRS

Should Mr. Roat give out a statement to this letter let every heir check up and see that the statement is correct with the amount he or she paid. If not correct, kindly notify the Philadelphia Branch of the error and we will *not* accept his statement and bank draft. Now go to it, as we mean business, we want our money put to the use for which it was collected and not held by one man bearing

Plate Seventy-one

To the Heirs of Anneke Jans Bogardus
of the United States and Canada.

From the Philadelphia Branch
Society, 343 Fountain St.
Roxborough, Philadelphia.

There has been some dissentian between the National Committee and Our N.Y.Representative, and we of the Philadelphia Society feel that unless some of us come forward and take the helm, it will end dissastrously for our cause. We are desirous that this dissention shall not have the effect of breaking up our order, or changing the plans made, or interrupting the work of publishing the contemplated book, containing our documents, records and proofs, of which headquarters at the time the plan was evolved some six month ago, heartily approved.

The causes of the dissention are:

Mr.Gridley refused to go before the heirs, with aview of interesting their further financing of this cause, unless the National Treasurer would forthwith issue a statement showing the amount contributed, by whom, and for what the money had been expended, and then to issue such statement every month.

Mr. Gridley would not consent to devite from the well-known considered plans to publish our record, and put this book on sale to the public, for the purpose of overcoming the present ridicule, and want of faith in the justice of our cause, larggly due to want of knowledge on the part of the public, as to what we are fighting for and why, which plan we consider will give us not alone the requisite finances for future action, but also public opinion the necessary foundation for a fair hearing in this matter. Mr.Gridley holds that the publication of this book, will do more for our cause than 1,000 attorneys, and that any suit brought without it will be premature, and only result as many many others have ended in an "I told you so".

We heirs who reside in this section have called a meeting of our heirs, to consider some plan whereby the work can proceed and we have obtained Mr. Gridley's consent to go on with the work, if the heirs will act promptly, so that he can proceed without interruption; for he states that he will not take it up again if he lays it aside. He will not give it more than six months more of his time.

We enclose a pledge herewith, which we wish each and every heir to sign, and assure us of their assistance to the extent of $15.00 each. We also wish to have each and every heir advise us of the amount they have contributed to this Order since its organization in December 1922, and by this means we shall find out exactly who has been supporting the National Order, and to what extent; for we understand no such list has been kept at headquarters, and in the absence of a willingness to render a statement, we do not know just how much has been contributed, and by whom. From information we believe there are about 1,000 heirs members of the National Order, and if each will contribute $15.00 this undertaking can be a success and finished; otherwise all the money and time spent in this effort since December, 1922, will be lost.

We approved of the stand taken by Mr. Gridley, in regard to this matter, and we can assure you that all moneys sent to him will be reported, and a statement made giving you how it is expended, and nothing more could be asked. The heirs are certainly entitled to that information no matter who handles the money. Mr.Gridley says this is how he handled the funds in this matter before.

Now be sure and have your names registered with the Philadelphia branch of the society, so that we shall never again be in this position, where we have no list of the contributors to this cause, and no means of finding out just how much they have supported it. If you feel you cannot pay the full amount of $15.00, will you please indicate what you can do, so that we can get some idea of the amount available.

Earnestly asking your financial support and prayers for our success, and with good wishes to all the heirs in general, we are, Yours etc.

Dated. 11/1 1923

Treasurer. William Krause
Secretary Hannah Gridley
343 Fountain St.,
Roxborough, Philadelphia, Pa.

Pres. J. B. Livingston
1st Vice Pres. Jacob Gerzis
2nd " " Ethel Rhodes
3rd " " .....
4th " " .....

PHILADELPHIA SOCIETY
of
ORDER OF ADVOCATES OF JUSTICE FOR THE DECENDENTS OF
...ANNEKE JANS BOGARDUS...

Roxborough, Philadelphia, November 29, 1924

RESOLUTION

WHEREAS, every member of this society knows full well that Mr. Gridley is a disbarred attorney, and that from the first he has told us that we must not refer to him as our attorney or legal adviser; but that if we must refer to him we do so as our representative or adviser; and

WHEREAS, Mr. Gridley has insisted from the first that each and every one contributing to the funds for the publication of the book shall sign pledges in order to protect him, in case the Post Office Department require him to show for what purpose money is coming through the mails, and in order that he will be in a position to back up the receipt of every dollar sent him; and

WHEREAS, Mr. Gridley from the first, and throughout this whole matter, has insisted that we must forget suits and settlements, and not collect money for the purpose of or under the promise of suits or settlements, pending the publication of this book, which book it is understood each society may present to an attorney of their own selection; and

WHEREAS, it is perfectly understood by all of us that the money being raised, which has been raised, and which might be raised is for the purpose of financing the overhead and expenses incident to the publication of the book and the procurement of records, etc.; and

WHEREAS it has recently come to Mr. Gridley's attention that his wishes are not being carried out—

Now, therefore, be it

Resolved: By the Philadelphia Society, that Mr. Gridley be informed that the members of this society understand now, and haveunderstood from the first that he is a disbarred attorney, and cannot act as our attorney, or as legal adviser of the organization; that we also understand that he has not attempted to act as such attorney, and that we must not mention him, by letter or otherwise, as such attorney; And be it further

Resolved, that the members of the Philadelphia Society having understood from the first that each member should sign a pledge to furnish to Mr. Gridley for his protection, that the secretary of this society is directed to ascertain from each member whether or not they have signed such pledge, indicating for what use the money contributed by them was to be used, and those who have not signed such pledge, shall be requested to do so at once, and said pledge shall be furnished to Mr. Gridley, said member being privileged to make such changes in said pledge as they may desire; And be it further

Resolved, that the members of the Phila. Society have understood that Mr. Gridley's work is solely and entirely that of publishing a book for the heirs, and at the heirs' request, on the condition that they finance it, and that the members of the Phila. Society will gladly go on record as stating that he has not solicited them to contribute to the publication of this book, and has kept the matter of raising the funds for the publication of the book entirely in the hands of the heirs themselves; and be it further

Resolved, that a copy of this RESOLUTION be furnished to each and every society in the organization with a request that they pass like resolutions and send them to Mr. Gridley, executed by the secretary.

SECRETARY HANNAH GROW LUTZ, 343 Fountain St., Rox., Phila., Pa. PRESIDENT J. B. LIVINGSTON, 2134 S. Dagget St., West Phila., Pa.

TO THE MEMBERS:

The above resolution was passed by our members at the meeting of November 29, 1924.

For reasons that time cannot permit to explain here we the officers and attending members of Phila. Branch wish again to bring to your attention the following:

1st. That Mr. Gridley is a disbarred attorney and cannot act or does not attempt to act as an attorney or legal advisor, therefore we ask that you avoid using his name by letter or otherwise in that respect, you are to address him as our representative. Please stop all talking and of course if necessary be careful who you talk to. You must avoid using suits, settlements, case, and all such words. You are collecting and contributing money for the publication of our book ONLY as per pledge.

2nd. Some have signed pledges, some have not, others forget whether they have or not, therefore we are asking each and every one to sign another pledge exactly like the former one and forward it at once so we can check up, that all have signed the pledge therefore protecting Mr. Gridley and the publication of our book. DON'T NEGLECT, IMPORTANT.

TO THE SISTER SOCIETIES.

Greeting:—

We the Philadelphia Branch No. 1—have been asked by the N. Y. office to take up the following matter and answer it, as so many requests come in and Mr. Gridley will not handle such part of the cause.

1st. That it has been reported that the drive is over the top when that is NOT so—that the only way the societies could possibly know whether it has gone over the top would be by a statement. Mr. G. says it would be issued when it went over. Another society has requested no statement until then.

2nd. We understood the circumstances under which that estimate of $15,000 was given; for at that time it was necessary to get the smallest and most economical sum to cover the most important points, and at that time G told us that he would have to leave out some of it to get it down to that figure. Now inasmuch as there seems to be quite a number of new people interested and who want to come in and help, we agree to let the new ones, those who have learned of the affair within the last 4 or 5 months, come in for $15.00 and $5.00 a month as per pledge. Those who have known about this for a year, yes 2 or 3 years and are holding off for the outcome cannot join for less than $200.00 not returnable. This amount may be changed to suit each separate society or locality. This will make possible for the new ones to join at a nominal figure and at the same time give us a lift over the top and perhaps make it possible for G to put all he wants in the book and add to the number of volumes in the first edition and therefore make the cost per volume less.

3rd. It is here understood that Mr. G. made the estimate with the Phila. society when we asked him to publish the book for the heirs direct without the old National and therefore he has advised us to take up this matter with the different societies, and we request that all be congenial and agree. We therefore suggest that all societies inform us and the New York office and each other what you agree upon.

Philadelphia Branch No. 1 agrees with Seattle No. 3 that all officers of the new National shall be of selected as Heirs who have this work at heart and whom Mr. Gridley can work in perfect harmony with and under his advice. We wish to add, that as each society is to select an attorney of their choosing and that there is to be 5, 7, or 9 or whatever number he shall see fit, that these men shall be selected by Mr. Gridley from the attorney's names proposed by the different societies.

Roxborough Philadelphia
2/20/24

Mrs Lillian M. Fathers
1514 Quincy Ave
Racine Wis.

Exhibit 29
2-21-29

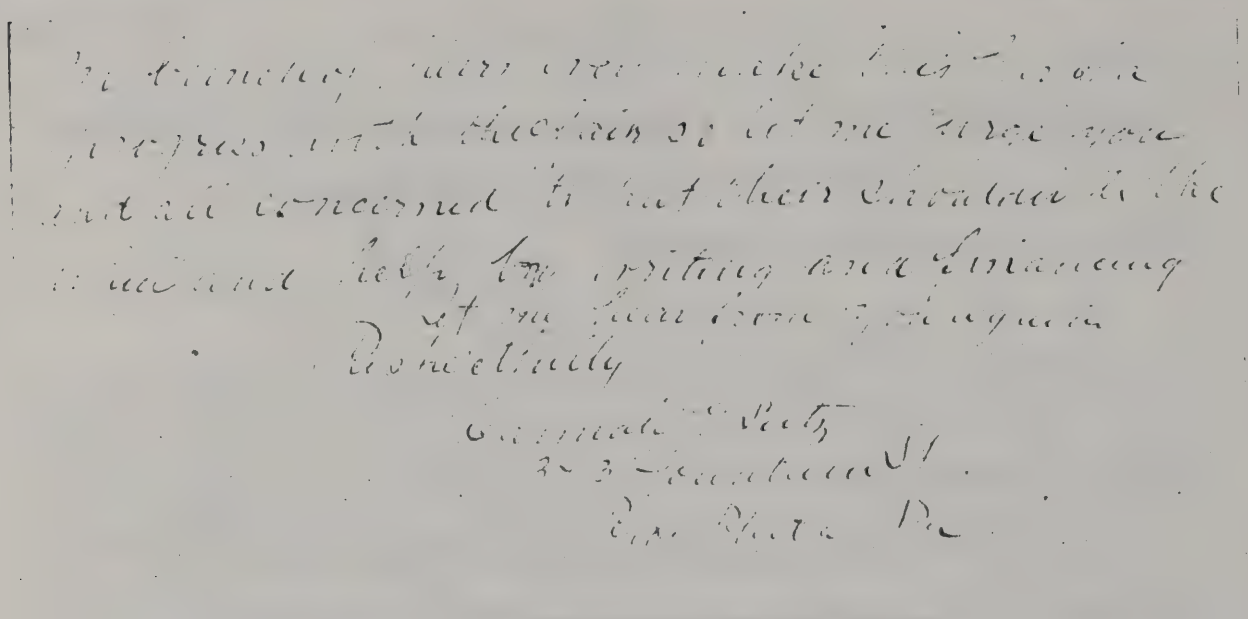
Dear friend:-

Yours of 2/12/24 received. Always glad to here from any of the heirs. 1st Mr. Gridley is no under bond, he is under contract which if the heirs will do their part he must do his, but if the heirs fail to finance the proposition of course he then will not have to fulfill his part of the contract. Therefore it is necessary for every heir to put their shoulder to the wheel and push.

The treasurer of the new National who will take care of 85% of the proceeds from the sale of the books will be bonded. Rod was never under bonds. The books will go on the market when the reports shows a proceeds collected of $5000 and not before according to contract after that it will take about 6 mos to make a final —

It does not seem to me that Cliff is for Gridley am afraid he is carrying a load on two shoulders.

Plate Seventy-three-A


[illegible]
progress with the work so let me hear from you
and all concerned to put their shoulder to the
wheel and help the writing and financing
of my poor town Sycaqua
Respectfully
[illegible]
[illegible]
[illegible]
[illegible]

No 7 Cherry Street, N. Y. Residence of Saml Leggett, first President of the New York Gas Co. The first House lighted with Gas, 1825.

Plate Seventy-four

Roxborough Phila
Aug 15, 1924

Dear friend

The letter was address to you Mrs Wright and marked personal, it enclosed a ~~copy~~ letter from Page where he tells how the Lansing picnic made out and about "Lucking", that is the most important part. You see I had just received your letter about Mrs Brown and this was another bad one so marked it personal.

I asked what you though was up that Mr. Tiffe was at the picnic to carry the news to "J" + R" and hence to "T".

In Page's letter he said that Mr. Lucking had been to N. Y City and investigated Mr. "J" and found that he was one of the honestest lawyers in N. Y. Why was this?, I indeed am sorry it is lost, I was sure it would give the boss the walkers or something and it sure did to worry me, to think "Lucking" on he heels again. I will see Mrs Cox on Sunday and will see if see got the same letter from Page and get some satisfaction about coming to the picnic. Sincerely Hannah

AUG 16 1924

Plate Seventy-five

Roxborough Philadelphia
Dec. 20, 1925

Mr. W. T. Gridley

Talk about being snowed under, well I guess I am just a deep as ever I have been, I don't see when I will get caught up. Talk about letters well letters and letters and still more to answer.

We had our regular as well as special meeting yesterday. The true and tried and faithful members were there, it seems that those that put the money in it never tire and those that paid the least have the most to say. The meeting went smoothly and unaminously.

Moved and seconded that the financial statement and report of Mr. Gridley be received and approved subject to corrections of errors and that no further expense be incurred for the making of financial reports before June 1, 1926 unless the books be published before June 1, 1926 then a report is to be rendered — unaminously carried

Moved and seconded that the secty send report, names, amounts, dates of amounts of book subscriptions to the N Y office and the $450 be retain subject to N. Y bank draft payable on the receipt of the books

Unanimously carried.

Moved and seconded that the members pledge $4, one dollar a month for four months payable on or before April 1, 1926 — that further questions on this money pledge matter be brough up in the April meeting. Unanimously carried.

(This was done because some have no work other only two or three days and they feel that by April the 1st they can meet this $4 and also by then see forward into something better, rather than pledge and not fulfill, if this was done.)

Now about the report I have'nt through about it and about the questioner half of them claim they dont have them, where are they. I received the few sent with letter of 12/16/23 and have sent them out and have no more. This lists are some who did'nt get them, how many more I can't say at this time

Mrs Phebe Coy at 211 Warren St. Grenville Ohio
Mr. Chas Shirey 5028 Brown St Phila
Mr Robt Brittingham P.O. box #73 West Chester Chester Co. Pa
Mrs Ella Thomas — P.O. box ~~51~~ Gibbstown N.J.
Mr. Clyde Shirey
Mr. J. B Livingston 2134 S. Daggett St N. Phila ✓
Mrs Julia A Powers 4851 Fairmount Ave Phila Pa
Mr. Lewis Ross 331 E State St. Kennett Square

There were several more I can't think just at present who they are.

Please send me a few more as I do not have any now.

I will make corrections on the report and send copy as soon as I can, and send you the questioners as speedily as I can get them it.

Respectfully yours
Hannah G. Lutz

Roxborough Philadelphia
Mar 18, 1926

Mr. John N. Page
1238 Coplin Ave
Detroit Mich
Dear member

Enclose find a set of questions which has been received into the Philadelphia #1 society for our approval. We have had it read and considered and I as secretary of Phila society #1 will accept the position of the Eastern coast secretary if the proposition goes through satisfactorily by the majority of the members or rather the question was put, if the #1 #2 and #3 societies approve of it.

You can see that Seattle and Phila have approved it and are now awaiting Detroit #2 signature Hundreds of members are waiting and watching for the action of these societies and ready to sign and approve the questions

I have had the following instructions, et to keep it confidential until you approve it and succeed with your part of the proposition 2nd. To make two (2) copies of the enclosed questions, hold the one sent me and have our members sign it, get the authority to add our members names to the list and forward (6) set of the copied sheets to you for your approval.

Plate Seventy-six-A

Should Mr. Gridley accept this plan then Mr. Tompkins is to notify Mr. Gusiola and the other two district secretaries sending a copy to the set of questions with names of all members then upon and the Chicago members and Mr. Gridley approval for each secretary to take it up in their district This is to be done as speedily as possible. Should Mr. Gridley fail or Mr. Lucking refuse, either or both you are to notify Mr. Wingate, Mr. Gusiola and myself and of course by then it will relieve Ernest of the heirs.

The name of Mrs. Ida M. Kasier, president of Seattle has been proposed for Treasurer.

Personally I don't think there is anything in this to hurt our cause and I have begun to realize that it is the best and wisest step that can be taken -- But will Mr. Gridley accept — is the question I think he would if you approved it and Mr. Gusiola surely was an old friend of his. It is true Mr. G cannot do anything further for us than the book and it seems to me a wise move not to let the book go on the market until this question of case or trial business is settled satisfactorily

Plate Seventy-six-B

You are to read, consider and ask (Mr. Ford's attorney) Mr. Lucking if he will reconsider the offer he made the heirs sometime ago and work in behalf of the heirs in such a way as the sheets prescribe. Just here I will tell you Mr. Griswold has succeeded in getting Mr. Wingate's service if Mr. Lucking will accept. Mr. Lucking is either to get in touch with Mr. Wingate or you are to notify Mr. Griswold how you have progressed and Mr Wingate will write to Mr. Lucking.

Unfortunely the full names and addresses of either attorney has not been turned over to me but I know if Mr. Griswold has secured Mr. Wingate's services you can get his address from Mr. Griswold. ~~Has secured Mr. Wingate's services you can get his address from Mr. Griswold.~~ After this has met with your approval and you have secured Mr. Luckings promise of his services your are to do as I have done — have the members of Detroit # 2 to sign the set I have sent you, you are to hold it for future reference, make or get made (2) copies of the enclosed set of questions together with the names here upon and the names of those of your members who have signed - send one to Mr. Gridley for his approval and one to Mr. Tompkins of Chicago for his acceptance of his position.

Plate Seventy-six-C

for the members.
You know Phila stands with G
and they have gotten alive and are anxious
to see this or some more hustle things along.
They have assured me if G approves this
proposition they will give instructions
to have the $460 book subscription money
and the crusade money turned over to Mr G.
but if he does not it is to be held until
some sound proposition is forth coming.
Here's to our success
Sucking and Wingate
Hannah Grow Lutz
Secty of Phila Ch
343 Fountain St
Ar. Phila Pa

TO THE ORDER OF ADVOCATES OF JUSTICE FOR THE
DESCENDANTS OF ANNETJE JANS BOGARDUS.

Dear Member, Descendant or Heir:-

We have herein submitted for your careful judgment a set of questions which we wish to give careful consideration, using your own mind and not be influenced by any one person or society. After consideration, we ask you to fill out same and return it to the Secretary in your section. This must be done in ten (10) days from the time you receive it in order to insure speedy work.

Q.1. What is the main part of this great cause that does or will interest you most?
Ans. A settlement or suit which will be in our favor.

Q.2. What is the book worth to you?
Ans. Without a case or suit, not fifty cents.

Q.3. Have we a promise of a suit?
Ans. No.

Q.4. Why not?
Ans. (a) Because Mr. Gridley is a disbarred attorney, he cannot and will not act in such capacity.
(b) Because the last report shows there are not sufficient funds to do anything.

Q.5. How have we expected this part of the controversy to be handled?
Ans. Out of the sale of the first thousand (1000) books there was to be a sum of money large enough to pay several attorneys retaining fees. Instead, this will be used to make a larger book to enable the members to have all facts and proofs within its binding.

Q.6. What will happen if the book goes on the public before a suit is prepared and filed?
Ans. Spells failure because you are giving the enemy your facts and proofs that they may be able to appear against you.

Q.7. Shall the book go on the market before a suit is prepared and filed?
Ans. No. By all means, NO.

Q. 8. What must we do?
Ans. We must see that some suit is prepared and filed.

Q.9. Know in Mr. Gridley cannot and will not take any such actions, who will do it?
Ans. We must secure the services of two attorneys who will be willing to confer with Mr. Gridley.

Q.10. How will we do that?
A[illegible] [illegible] member of the Annetje Jans Bogardus Society Ten to twenty [illegible] ([illegible].00 to [illegible]5.00) payable on a given date to a person to be [illegible]. This money shall not go to Mr. Gridley, but shall be used as re-[illegible] [illegible] expenses that will arise. Balance of the attorneys' [illegible] [illegible] taken from the estate. Members shall be given [illegible] notice to pay their contribution.

Q.11. How shall the suit be filed?
Ans. (a) Left open for the Advisory Board and attorneys to modify.

A.J.B..... 2

Q.12. Shall this interfere with the sale and publication of the book and the crusade work?
Ans. It need not interfere with Mr. Gridley's work whatsoever, providing the crusade work be completed by June 1st, 1926. We herein express our desire that all members get back of the work and get it completed. Rather, it should be easier for the crusade workers.

Q.13. What about the genealogy?
Ans. Mr. Gridley will no doubt take care of that after the publication of the book or rather, manuscript, is completed.

Q.14. Who shall take care of this new work?
Ans. The oldest members are best fitted for the work, therefore we submit the following names and hope they will all meet with your approval:

President or Chairman,
Mr. E. D. Griswold, #3 Society,
5312 Stoneway, Seattle, Wash.

Vice-President,
Mr. John W. Page, #2 Society,
1238 Coplin Ave., Detroit, Mich.

Secretary,
Mr. G.S. Stone, #10 Society, Pacific Coast Section
244 Wisconsin Ave., Long Beach, Calif.

Mr. Tomkins, Chicago Society, Miss. Valley "
2031 Leland Ave., Chicago, Ill.

Mrs. Hannah G. Lutz, #1 Society, Atlantic Coast
343 Fountain St., Rox., Philadelphia, Pa.

Treasurer, To be elected or appointed to meet with the requirements of the above committee.

Q.15. What shall these do?
Ans. (a) They shall secure two attorneys who will work in harmony with Mr. Gridley.
(b) Mr. Griswold, Mr. Page, the two attorneys, and Mr. Gridley, comprising five, shall meet and act as an advisory Board. They shall confer with Mr. Gridley and do all things in the name of the association of members who have financially supported the cause and shall proceed to file a suit. Mr. Tomkins of Chicago, shall be General Secretary, shall meet with the Advisory Board and shall act as a general reporter and secretary for the association. Mrs. G. Wright as Stenographer and Secretary for Mr. Gridley.
The attorneys shall appoint their own stenographer and secretary.
Mr. Tomkins shall make such reports and publish such parts as he shall deem proper for the good of the cause.
The expenses shall be paid out of the sum raised for retainers and expenses, after the retainers have been paid.

Q.16. What shall be done if Mr. Gridley fails to co-operate?
Ans. There is no reason why he should not. We are advancing with the work and it is probably that more money will be forthcoming for his overhead. More books will be sold. He has a better chance to get his vindication. Should he fail to co-operate with the committee and the members in this new step, it is all well and proper that the heirs and members take the situation in hand. We want a settlement and cannot go on forever, allowing our chance to pass and the book to go to the public and thereby hurting our cause.

A.J.B.....3

If such should be the case, the committee should at once order the stoppage of his overhead and to proceed to collect the retainers and the attorneys, who shall use such means as they deem necessary, to cause him to turn over all proofs, documents, papers, books, maps etc., in his possession in behalf of the associations of heirs. The attorneys shall then proceed as they deem wise.

Note: All these papers, books, proofs etc., have been purchased with money collected in various ways from the heirs from time to time.

Q.17. When shall the book go on the market?
Ans. When the Advisory Board shall deem it wise and proper.

TO WHOM IT MAY CONCERN:

Be it known, for Mr. Gridley's protection, that these questions and answers submitted are by the heirs, without jurisdiction whatsoever from the New York Office or from Mr. Gridley.

Dear Member:-

After reading and considering, you will realize that it is now time to act. Mr. Gridley has done all for us that he is able to do and it is time the members pick up the work. If you are interested in the first question you will see that this is the one and only way to bring about a speedy settlement.

For the protection of those framing this, it has been left unsigned. We trust that it will meet with your approval as we have placed our honest endeavors behind this movement.

The committee will gladly consider any suggestions given.

Sign and return, either by Societies or direct to the Secretaries in the First, Second and Third Section, giving the amount you will contribute.

Note:- This contribution is absolutely necessary and means a much greater movement than ever undertaken before. Every member must contribute to have his name appear when the suit is filed.

Date Mar. 3, 1933.

Ida M. Kaiser, PRES.
Signed [illegible] Grinnold, SEC.

Address [illegible] Way

Society - North West A.J.B. Soc.

The Secretary of this Society is instructed to place the foregoing questionaire before the members for signature.

A.J.B..... 4

The Secretary of No. 3 Society is instructed to type below the names of all members signing the foregoing questionaire, at their request:

Ida M. Kaiser, President.	Ada M. Dean
E. D. Griswold, Secretary	Leslie Hallett
U. L. Cook, Treasurer	G. C. Hallett
Blanche Barrett	Annabel Emons
Mary Snyder	Pearl H. Morlan
Chas. W. Allen	Alice O Neal
George A. Stidham	Honor E Bonall
Nelson VanZile	Edward B Collins
Ida Douglas	Georgia Gorton
Margaret Kingston	Fred S. Kittredge

Received in Phila. Society

DATE. March 13, 1926.

PRES. John B. Livingston
SEC. Hannah G. Lutz

UNANIMOUSLY CARRIED

Society, Phila. #1 Society

The Secretary of Phila. #1 Society is instructed to place foregoing Questionaire before the members for signature.

The Secretary of No. 1 Society is instructed to type below the names of all members signing the foregoing questionaire at their request, make two copies and forward one to the Detroit Society and the other to Columbus as directed.

J. B. Livingston, President	Ella Thomas
Hannah G. Lutz, Secretary	Clyde Shvery
Elsie M. Schmidt	Theodore Thomas
Ida M. Terris	Mary Sweigart
Frank W. Brower	Jennie Sweigart
Lewis E. Goss	Samuel Wasson
H. J. Brower	Mary Grow
Samuel R. Brower	Florence Schumann
William Schumann	

More names will be forwarded as soon as they have signed.

Plate Seventy-seven

Mrs Hannah H. Lutz.
343 Fountain St. Roslyn,
Philadelphia, Pa.

Copy

Lancaster Pa.
June 8th. 1926.

Dear Madame:

Replying to your favor under date of the second inst. I beg to advise you that I am acting in an entirely impersonal, unimpassioned manner. I should pursue the same course were the money in the hands of any one else. I have regretted exceedingly that your action has made this course necessary but you have not deigned me the courtesy of a reply to any former communication and therefore no other course was open. You are entirely in error in saying that the monies held by you are the property of the Philadelphia Society. This money is the property of the contributing individuals and merely held in trust by you upon authorization of the contributors pending their instructions. The parties whose names have been submitted to you, have conveyed, power of attorney for recovery to me and have requested the return of their money. My suggestion (which I have no doubt you will ignore) as the least troublesome course and also the cheapest, is that you forward to me. Schlater the amount specified and save yourself the costs of prosecution. Like you, I am tired of this inaction and marking of time. For the sake of harmony and in the name of decency and common sense, Mrs. Lutz, cut out the threats. If you feel that you have in your possession information that the Postal Authorities should have, by all means turn it over to them. If the thing is a hoax, the sooner it is exposed, the better it suits me and if you feel that because the parties concerned have asked for the return of their money it justifies your suggested policy of "rule or ruin" by all means justify yourself. All I am concerned with, is the recovery for those who have asked it of their funds and I will leave no stone unturned to accomplish this.

Very truly yours.

H. Ex. Hoover.

14 Kennon St

JUN 30 1926

This is copied from a typewritten copy he sent to me.

E. S.

Plate Seventy-eight

This is to affirm that formerly I was a member of the Phila. Society of Advocates of Justice for the descendants of Annetje Jans Bogardus of which Hannah G. Lutz was Secretary and attended ____ meetings at which Mr Gridley and Mrs Wright were present.

The first meeting was when Mr. Gridley came to a meeting at the home of Mrs Lutz, it was at that meeting the enlargement of the book was discussed and it was decided to enlarge the book. On March 14-1925 another meeting was held at Mrs Lutz' home. I gave her the money for Adv. subscription of the book, the following day, she turned that amount with what she had collected on the 14th over to Mr Bogardus, the State Treasurer. After that date she refused to give the Treasurer any money collected by her and she kept telling the Phila. members she would collect their book money. she was not bonded neither was she Treasurer.

Mrs Lutz whole talk and work was for the book, she ~~has~~ repeatedly told us not to talk suits, settlements and the like. Mr. Gridley was engaged to publish the book, giving his five years connection with the Bogardus matter.

Celias C. Falck

HANNA G. LUTZ, was thereupon called as a witness on behalf of The United States, and having [259] been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WATKINS:

Q. What is your name?

A. Hanna G. Lutz.

Q. Mrs. Lutz, you reside where?

A. Philadelphia.

Q. Philadelphia, Pa.?

A. Philadelphia, Pa.

Q. You will have to talk louder. I cannot hear you.

A. Yes.

Q. How long have you lived in Philadelphia?

A. All my life. I was borne there.

Q. Do you claim to be one of the heirs of Anneke Jans Bogardus?

A. I don't believe I am in position to prove it, but Mr. Gridley says I was an heir, and I think I am an heir.

Q. Mr. Who? [260]

A. Mr. Gridley.

Q. You have for some time past been of the opinion that you are an heir?

A. Yes.

Q. I will ask you whether or not you were ever a member of any society, the major portion of the membership of which were alleged heirs of Anneke Jans Bogardus?

A. Yes.

Q. And where was the society of which you were a member?

A. Philadelphia.

Q. Do you remember at what time you became a member of that society?

A. Which society do you pertain to?

Q. The Philadelphia society that you have referred to.

A. **You mean the one that was with Gridley, or the National Society? There are two.**

Q. There are two? You have said that you were a member of a society in Philadelphia?

A. Yes.

Q. When did you become a member of that society?

A. **After the break of The National officers with Mr. Gridley.**

Q. I did not hear you, Mrs. Lutz?

A. After the break of The National officers with Mr. Gridley.

Q. Have you had a prior membership in some other Society?

A. Well, in the National, I suppose the Philadelphia Society was connected with the National, too. [261]

Q. Of which one of those two societies, the Philadelphia Society or the National Society, were you a member first?

A. The Philadelphia was like an auxiliary, or whatever you call it, a National Society at first, and I was a member of the Philadelphia Society.

Q. When did you become a member of the Society, if you remember?

A. January or February of 1923.

Q. Did you at any time while a member of any of these Societies ever see the defendant Gridley or the defendant Mrs. Wright, or either of them?

A. Yes.

Q. When did you first see Mr. Gridley?

A. The first Saturday in June of 1923, I went to Wilkes Barre to see Mr. Roat about some lineage, and Mr. Jones took me over to Kingston to see Mr. Roat just a few minutes and Mr. Roat asked me if I would attend the National meeting which was the second Sunday in June, which would be the following Sunday, and I did, and at that time I met Mrs. Wright and a man that was introduced to me as Mr. Anderson. Later I was told he was Mr. Gridley.

Q. Was the man whom you met on the second Sunday in June, 1923, the Mr. Gridley who sits here in the court room?

A. It was.

Q. I did not hear you?

A. It was. [262]

Q. Now at that time, the second Sunday of June, 1923, were you a member of the National organization?

A. Well, I had nothing from Mr. Roat or Mr. Jones to say that I was.

Q. I will ask you whether or not you had made application for membership?

A. I had not.

Q. Were you at that time, the second Sunday in June, 1923, a member of the Philadelphia Society?

A. I was.

Q. And you had become a member either in January or February of that year?

A. That is right.

Q. Where was this meeting that was held on the second Sunday in June, 1923, held?

A. In G. Murray Roat's store at Kingston.

Q. Do you remember approximately how many people were present at that meeting?

A. Might have been 10 or 12, I don't think there was any more, it was not a big meeting.

Q. Do you remember who the people were who were present at that meeting?

A. Mr. G. Murray Roat, Robert Jones, Mr. Teft, Mr. Sam Booth, myself—of course I was not a member of the meeting. I had no vote or voice on the floor, but I was just one of the heirs that could listen in. [263]

Q. Who else?

A. I don't know the others—why Mrs. Howells and Mr. and Mrs. Pyshu.

Q. Yes.

A. And they were there, yes, the other members that were there maybe 2 or 3, I didn't know, I really didn't know them.

Q. I will ask you whether or not both Mr. Gridley and Mrs. Wright were there?

A. They were.

Q. Do you remember, Mrs. Lutz, any of the conversation that took place at that meeting—without telling me what it is—do you remember? Yes or no?

A. Yes, just a little, not a whole lot, because I had no vote or voice, on the floor, you know.

Q. Well, did you learn, from your being in attendance at that meeting, as to what was transpiring at the meeting?

A. Well, it was purely a business meeting.

Q. What if any business did you hear take place at that meeting?

A. There was something brought up about the $500.00 and expense money or something like that. I cannot give you any amount, but I know that was one of the items, at least.

Q. There was discussed the question of $500.00 a month salary?

A. Something about that, I don't know whether he got $500.00 or whether he got $100.00 out of it. I couldn't say.

Q. Did Mr. Gridley say anything at this meeting? [264]

A. I cannot remember.

Q. What is it?

A. I cannot remember just what he said. He must have talked at the meeting, but I cannot remember.

Q. Do you know whether or not he talked?

A. Oh yes, he talked. They all talked, and discussed it. I had nothing to say in it.

Q. You were just there to—

A. (Interrupting) Just to look on and see how the business was going on and to satisfy myself, that is all.

Q. You say you had no active part in the meeting. How did you happen to be there?

A. Mr. Roat asked me to attend.

Q. And you went at his invitation?

A. Yes I did.

Q. I will ask you whether or not at that meeting you heard any discussion relative to the publication of a book?

A. No.

Q. You are sure there was nothing said about that?

A. Nothing of a publication of a book.

Q. Well, what were they talking about?

A. Well, I just cannot tell you. It was just a business meeting.

THE COURT: About a candy store or "blind pig?"

A. No, about the business of the Association.

THE COURT: That is what they wanted to know about?

A. Just a business meeting we were there for. I think there was minutes read and minutes were taken. Mr. Roat called the meeting to order. It was just a regular meeting.

Q. Did you discuss the weather?

A. No.

Q. What was the discussion about?

A. I just cannot tell you because I don't remember.

Q. The only thing you can remember was that there was some discussion about a $500.00 a month salary?

A. Yes sir, salary and expenses.

Q. And you say at this time, you were not a member of the National organization?

A. No, I was not. I was not voting at all, or anything like that. I had nothing to show, or papers, that I was a member.

Q. Alright. Did you at any time subsequent to this meeting on the second Monday of June, 1923, become a member of the National organization?

A. Not to my knowledge. I was told that I was a member, but not to my knowledge.

Q. As far as you yourself knew, the only membership you had was in the Philadelphia organization?

A. That is all.

Q. When was the next time after the second of June, 1923, the next Sunday in June, 1923, that you saw Mr. Gridley, if you ever did see him again?

A. Lenape Park, the last of August, Lenape Park, Chester County, the last part of August, it was on a Saturday, the last part of August, 1923.

Q. What is this Lenape Park? [266]

A. A Park in Chester County, a public place. They had a family reunion.

Q. By "family reunion" you mean what family?

A. The heirs of Anneke Jans Bogardus.

Q. You say this was toward the end of August of 1923?

A. It was.

Q. I will ask you whether or not Mrs. Wright was also in attendance at that meeting?

A. She was.

Q. Was that meeting indoors or outdoors?

A. Outdoors, an open air meeting.

Q. Do you remember anything that transpired by way of conversation between the defendants in this case, and the heirs, at that meeting?

A. The heirs had come there to listen to what Mr. Gridley had to say. He gave a talk. Mr. Gridley was making a speech or giving a talk at that meeting. Mrs. Wright did too.

Q. Both of them?

A. Yes.

Q. Now do you remember what Mr. Gridley said when he made his talk?

A. Yes. I cannot say just what they said, either one of them, but they both talked upon the rights that the heirs had in claiming this property.

Q. Do you remember at all what they said in that connection? [267]

A. No, I do not.

Q. Mrs. Lutz, do you remember now of what transpired at that meeting, to know whether Mr. Gridley said that the heirs had an interest in this property, or that they did not have any interest in the property?

A. No, I couldn't say, because it has been so long, I have forgot. But he did talk about the rights of the heirs. That is as far as I could tell you.

Q. Did he say that they had rights or had not rights?

MR. McARTHUR: Now, if your Honor please, I object to that. She has already answered that identical question. It is decidingly leading.

THE COURT: I will let her answer it.

Q. Answer it.

A. Yes, but he said they had rights.

MR. McARTHUR: I take exception.

Q. What organizations were present at that meeting, if you know?

A. Some of the National members, and some of the Philadelphia members, and a great many heirs, or would-be heirs that were not members, the family in general.

Q. It was not, as I understand you, a meeting primarily of the Philadelphia organization then?

A. No.

Q. Have you any idea at all, Mrs. Lutz, as to how many people were present at that meeting?

A. Maybe 2 to 300, it was quite a crowd. I couldn't say just how many. [268]

Q. At this time, in the end of August, 1923, were you holding any office in connection with the Philadelphia organization?

A. Secretary.

Q. At what time did you become secretary of that organization?

A. At the organization of that branch.

Q. What is it?

A. At the organization of the Philadelphia Society.

Q. You were the first secretary of the Philadelphia Society?

A. Yes.

Q. And when was that Society formed, in January or February?

A. February of 1923.

Q. Do you remember at all anything that was said by Mrs. Wright at that open air picnic or meeting?

A. Nothing whatever only they were showing the heirs where they had their rights.

Q. What did they say in that connection?

A. Only they just gave us the history, told us where it was.

Q. By "they"—what did they say about that?

A. I could not remember now.

Q. You don't remember where the property was?

A. In New York City.

Q. Did you later on after August of 1923 again have contact with Mr. Gridley and Mrs. Wright?

A. On the 13th of October, 1923—no, beg your pardon—I am answering the wrong question—let me think—you mean personal contact, or telephone, or what? [269]

Q. Well, any kind of communication with Mr. Gridley.

A. Not with Mr. Gridley.

Q. Did you with Mrs. Wright?

A. Now, you have got me mixed up, I don't know. Will you read the question again?

Q. Did you at any time subsequent to this open air meeting at the end of August, 1923, have any further contact with either Gridley or Mrs. Wright?

A. Sometime in October Mrs. Wright called me on the telephone.

Q. And where were you at that time?

A. At my own home, Philadelphia.

Q. What did Mrs. Wright say to you?

A. She asked me if I was coming over to New York.

Q. What did you say?

A. I said no.

Q. Did you say anything further?

A. When we left Wilkes Barre on the second Sunday in June, I told Mrs. Wright that I had never been in New York, and she asked me at that time, would I come over to New York, and I said I would like to, and I would like to see New York. Nothing was said further until she called me on the telephone and she asked me if I was coming over, and I said no, I was not. I had thought of coming over with Mrs. Hanway, an elderly woman, and Mrs. Hanway was on the election board and she was an elderly woman, it was too much for her, and we would come over later. [270]

Q. Did she ring off then?

A. No, she did not.

Q. What did she say further?

A. She asked me if I would come over. I said I could. She said, tomorrow? I said no, I could not come tomorrow. She said, when can you come? I said Sunday. So my husband and I went over on Sunday, the following Sunday.

Q. That is you say that was when, that telephone conversation, approximately when?

A. In October—no, wait—you see I forget, it has been so long—I think it was October.

Q. October of 1923.

A. Yes.

Q. And do you say that you and your husband did go to New York then?

A. Yes, we did go to New York, and wrote her, yes, if I am sure of the dates—no, not just at that time.

Q. Did you at any time?

A. A little later on I did.

Q. This was—

A. This was—I have got the conversations. I want to get straight on this. She asked me if I was going to Wilkes Barre, first, that was the first conversation, she called me 2 or 3 times, she asked me those questions, she asked me if I was going to Wilkes Barre, first, on the National. And I said no, I did not know there was a National called—now I am getting straight—and she said, did I know [271] that they had not credited me—this is something to the effect, did I know they had not credited me with the amount of money I had said I had turned over down at Lenape Park. And I said no. And she said Miss Kelsey, or Mrs. Kelsey, or somebody of that name had told them that I had not. And I got a little warm under the collar. I said, well, I will go to Wilkes Barre. **So on the 13th of October** my husband and I and Mrs. Hanway went to Wilkes Barre.

Q. What happened in Wilkes Barre?

A. Well, in Wilkes Barre they had an office in the Miners Bank Building where we went to that office. It was closed. We inquired around the streets. We met a child that belonged to Robert Jones. We asked where his daddy was. He ran in and asked his mother. A boy came out, he said that he was going toward the midnight meeting.

Q. Then what did you do?

A. Ten minutes after ten of that evening we were over to the Miners Bank Building, we were beginning to collect for the meeting.

Q. Did you attend the meeting?

A. I went into the meeting just as I did to the others. I was not a member. Some people said I was a member. But to be truthful with you, I didn't know that I was a member or not.

Q. I ask you whether or not either Mr. Gridley or Mrs. Wright was in attendance at that meeting?

A. No, they were not at that meeting.

Q. Well, now when was the next time that you [272] saw either of these defendants after that?

A. When I went to New York after the other conversation that I told you about.

Q. So that your conversation relative to going to New York was after this meeting of October 13?

A. That is right.

Q. When you went to New York, I will ask you whether or not you saw either of these defendants?

A. Mrs. Wright told me to meet her in the ladies' waiting room and that is what I did.

Q. Ladies' waiting room where?

A. Pennsylvania Station, New York City.

Q. And you did meet her there?

A. She took us out to where Mr. Gridley was.

Q. And where was he, if you remember?

A. In the Station somewheres.

Q. Well, did you remain at the station all the time you were in New York?

A. They took us in the restaurant there in the station and we had something to eat.

Q. Then what happened?

A. We sat there and talked for quite a while.

Q. How long?

A. Probably an hour, hour and a half. [273]

Q. Do you remember what that conversation was?

A. Mr. Gridley said he was breaking with Roat.

Q. He was what?

A. He had broke with Roat.

Q. Broke with Roat?

A. Yes.

Q. By "Roat" you mean G. Murray Roat?

A. Yes.

Q. Did you have any further conversation about that?

A. Well, he did say, and talked why he broke.

Q. What did he say about that?

A. He said that Mr. Roat was getting the money and he was not getting hold of, to get some money, so he could use it to get the data in preparation for this case.

Q. What did you say in response to that, if anything?

A. I asked about talking with Roat to make it up with him.

Q. What did he say?

A. He would not do it.

Q. Did you have any further conversation there at the station?

A. Not just at that time, I don't think, there may have been, but we went out, he took us around, we got a taxi and rode around the city for a while—it was a bad day—and then we took a trolley car. You see, it was all pertaining to the heirs in the case, he showed us different pieces of ground, where they were. I was never in New York before or since. I could not tell you where they were. He [274] showed us a triangular park of land. He pointed out a special building. He said how much it was worth. And like that. Well, that is as far as I can tell you.

Q. You say that he took you and pointed out certain property that he said was part of the estate?

A. Yes.

Q. And you say you don't know where that property was, not knowing New York?

A. No.

Q. How much did he say this building that he pointed out was worth? [275]

A. I am not quite sure, but I think he said five million.

Q. How much?

A. Five Million.

Q. Five million?

A. It may have been two or five, something like that. I am not quite sure, but it was up something like that.

Q. As a matter of fact, in this state, in this particular state, the difference between two and five million was immaterial anyway?

A. I forgot, he was just trying to show the estimate value of it.

Q. How long did you remain in New York on this visit?

A. Well, he took us back to one of the hotels, and we had something to eat there, and after a talk there probably for an hour, we took the train to go home.

Q. And do you remember what the conversation was at this hotel?

A. Why, I just can't tell you what it was.

Q. No, but the substance of it?

A. I did not want him to go ahead. I did not want the heirs to lose their money that they put in, and thought it was foolish that they had gone that far, and that he should go ahead with it. He said that he would go ahead with maybe some other arrangements, **but he would not work with Roat.**

Q. Now, I will ask you whether or not there was any conversation on that day when you visited New York relative to the publication of a book?

A. Not whatsoever. [276]

Q. You say that on that same day you left and went back to Philadelphia?

A. Yes.

Q. Did you ever see Mr. Gridley after that?

A. Yes.

Q. Whereabouts?

A. In my own home.

Q. He came to Philadelphia?

A. When we left, he made arrangements to come over. I can't remember whether it was the next Sunday or the following Sunday, he would think it over until that time.

Q. That was the arrangement you made before you left New York?

A. Yes, sir.

Q. And you say in furtherance of that arrangement, he did come to Philadelphia?

A. Yes, sir.

Q. After he came to Philadelphia to your home, what happened? What transpired? Did you have further conversation about this matter?

A. Yes, before he came, during the time intervening between the meetings, I had spoken to members, or those that I could get in touch with, of the Philadelphia heirs, and they did not like the idea of losing the money that they had put in; that they should come to some conclusion about it. They said, "Well, if he won't work with [277] Murray Roat, suppose that he will work with the heirs direct;" that on Sunday when he came that they would make arrangements to work with him direct.

Q. Did you any such arrangement?

A. He went back and he published the first—printed the first paper.

Q. When he was in Philadelphia, came to your home in Philadelphia, did you make any arrangement with him to work with the heirs direct?

A. Not anything further than that.

Q. He just said that he would do it?

A. Yes, he would do it on the same basis that he was with the National, except that he would not work with Roat.

Q. Do you know of your own knowledge, Mrs. Lutz, whether or not any money was paid directly to Mr. Gridley by the Philadelphia Organization?

A. Not before that time.

Q. No, subsequent to that time.

A. Yes.

Q. You know that of your own knowledge?

A. Yes.

Q. And do you know in what amount?

A. No, I do not, probably about $2,000 all told, not quite those figures. That was all paid by check except one lot, and then I handed him the money and asked him to sign the check, and he did.

Q. I will ask you whether or not at any time you [278] received any report from him relative to the use to which this money was put?

A. It was agreed that he should make a report once a month, and he did make reports. He made one. I think there were six or seven reports right straight one each month.

Q. He made reports?

A. One each month, six or seven months right straight ahead, which was the agreement.

Q. And did he make reports each month that your organization was working with him?

A. He made a report of all organizations, of all the heirs throughout, that there were five or six societies.

Q. Now, after Mr. Gridley and Mrs. Wright had taken up with the Philadelphia Society direct, did you make any arrangements with him relative to the collection of funds?

A. He made out a circular and asked us to send it to the various different societies that were connected with Wilkes Barre, and got in touch with them somehow or other, I don't remember otherwise, I have forgotten, but we did get in touch with the various societies as they existed at that time.

Q. Do you remember what the nature of that communication was, what it purported to be?

A. Only something that he asked the heirs to sign. He did not sign anything.

Q. What do you mean by he did not sign anything? [279]

A. He did not sign any contract with us to do anything. I asked him to and he evaded my question.

Q. You say you asked him to sign a contract?

A. I asked him to and he evaded my question.

Q. Did you ask him more than once?

A. I think I asked him twice by word of mouth.

Q. And at no time did he sign such an agreement with your organization?

A. No, there was never any agreement signed for the heirs and which I wanted.

(A number of papers were marked Government's Exhibits 15 to 23 inclusive.)

Q. I will show you paper writings marked Government's Exhibits 15 to 23 and ask you if you ever saw them before?

A. Yes, similar ones at least.

MR. CHOLETTE: I think we will object to this, your Honor, on the ground that they are not signed by any one. They do not appear to be originals, and they are the statements or identified in any way as the statements of the respondents, on the face of it. They do not show who they are the statements of. I do not think there is sufficient connection with the defendants to identify them with the case.

THE COURT: As the record now stands, if there is any objection to them, I can't admit them. She has practically said nothing about these exhibits. I think she [280] said she saw them before, but that is about all. The record is practically barren.

Q. (By Mr. Watkins): Mrs. Lutz, you have said that in connection with the funds supplied by the Philadelphia Society reports were made by Mr. Gridley with respect to those funds?

A. They were, once a month.

Q. And did you as secretary receive such reports?

A. I received one copy.

Q. And what did you do with the copy that you received?

A. Kept it.

Q. How long did you keep it?

A. Until I turned it over to Mr. Frederick.

Q. So that the copies you received you turned over to Mr. Gregory H. Frederick, the gentleman sitting right here?

A. I think they are.

Q. You turned them over to him?

A. Some one asked me to get a set of them and I did not know whether I had them complete or not. I can't say now, but I got at least one copy from some one else.

Q. And you did turn them over to Mr. Frederick?

A. Yes, sir.

Q. I will show you Government's Exhibit 15, and ask you if you received the report which was either that one or one similar to it?

A. One like this. This is not mine.

Q. And the one you had, you turned over to Mr. Frederick? [281]

A. I may have turned this one over. If it was mine, it was destroyed.

Q. But that is similar to the one you got?

A. This one belongs to Mary Sweikart.

Q. And you turned that over to Mr. Frederick?

THE COURT: The actual one you got?

A. The actual one was destroyed by fire just a year ago.

THE COURT: What?

A. The actual one I think was destroyed by fire, because I have not got them.

THE COURT: I think you said you kept all except one?

A. I did keep them, but they were destroyed by fire. What I had of them. I was asked to make up a set of some one else's. Don't you understand me? I kept most everything, but we had a fire, and what was left of the fire, is what I had.

THE COURT: Are these the ones you had left?

A. I can tell them when I see them.

THE COURT: You received them through the mail?

A. Yes, I did, a copy of each one.

THE COURT: Did he sign anything that he sent?

A. He signed nothing.

THE COURT: I will not bar them because they are not signed. You received them in the regular course of the mail?

A. Yes.

282-284

MR. WATKINS: I submit, your Honor, that those being a complete set of the reports and the Govern- [285] ment's Exhibit 23 being a complete statement of all of the other eight, and it being a complete set, that they are admissible.

THE COURT: I will admit them at this time.

MR. CHOLETTE: I will take an exception.

THE COURT: They would get in sooner or later, and we may as well get them in complete, all of them at this time. The proof is not very satisfactory, but I will admit them.

MR. WATKINS: (Reading from Government's Exhibit No. 23): "Think. Loyalty demands secrecy. [286] This is for members only. Think. Prefaced, "A Classified Summary. Statement November the 1st, 1925. Subject to correction, hence please check and notify of errors. Apologize for taking time and incurring the expense of submitting a financial report for the period of August 1st, 1924 to November 1st, 1925.

"To those faithful loyal friends who left to my own judgment the advisability of rendering financial statements, decided upon returning from a recent meeting in Philadelphia that to stop the tongue-wagging, malicious imaginations and mis-statements, I would give the figures in black and white, and avail myself of this opportunity of asking those who cannot use their time to better advantage than to use my name in connection with their vindictive, pernicious imaginations to just simply quit.

"The receipts by the societies from August 1st, 1924 to November 1st, 1925 were: Philadelphia, $1,070; Detroit, $3,206; Seattle, $1,402.50; Hamilton, $1,083.50; Flint, $1-353.50; Columbus, $1,245.00; Buffalo, $495.00; Lansing, $1,968.00; Racine, $140.00; Los Angeles, $781; [287] South Haven, $400; Port Huron, $885.00; Battle Creek, $1,025.00; Benton Harbor, $645.10; Ann Arbor, $4,-260; Kalamazoo, $1,810; Chicago, $1,030; Jackson, $1,575; Holland, $1,115; Buckeye, Colorado, $90; individuals, $90; Norristown, $85; Lancaster, $95; Presque Isle, $35; Lapeer, $90; Upper Keswick, $88; New Brunswick, $95; ....., $105; Chester, $305; Amherst, $400; total $27, 418.60. Payments received on trips adv. Books, subs. and all other matters, $703.24, total $28,121.84.

The classified expenditures, subject to errors were unpaid overhead from November 1st, 1923 to August 1st, 1924, $1,561.25, overhead August 1st, 1924, to November 1st, 1925, 15 months $7,500, postage, 15 months, 445 days, 77-2/3 cents per day, $349.43; express, $111.05; miscellaneous expense, taxes, cartage, handling express, printed matter, books, stationery, packages, $1,483.35; office supplies, stationery, mimeograph supplies, etc., $436; and what purports to be 33 cents, either 33 or 44, it has both of them on there. Printing, $445.11. Maps, special service, records, books, etc.,

$11,017.81. Bank charges, collection checks, etc., $11; files, book shelves, etc., $487.50; picnic expense $439.12; telegrams and telephones, $24.13; trips, $2,473.99; newspapers, extras, $3.70; making a total of $26,343.88.

"Vouchers and expenditures will be audited by the [288] new National when formed. No further reports until after book is published.

"Fault finders, here is your chance to kick, kick now and then get back into the harness or break away entirely. It is time to quit if you cannot stop trying to make a crooked alley out of a straight street. Don't force this shoe on if it does not fit. You will get hurt, and there are plenty of others who can wear it with ease. I do not relish $100 worth of kicking for $15 support for two years. You are slower than tar in January. Get aboard if you ever intend and do not wait until the last minute to shuffle up the backstairs, and scramble for the front seat and yell, "We won the War."

"That has been tried. It does not work. Only makes prolonged agony. There is a place paved with good intentions. We do not want to put any A. J. B. blocks there. Intentions are not wanted. Can't wait. You have got 30 days to buy your book and pay for it. We are so slow the engine has caught up with us. No more track. Who is going to help lay the track for progress? Figure it out. Overhead cost you less than one cent a day per member. The contributions average $10 a year per member. Average mind. It was $7.50 per year. It used to cost you more to belong to the old Tea party, Promising Plan of $2.00 a month. [289] Hence, the questionnaire. It is time to find out how many live soldiers are in the ranks, and how many fire and fall-backs. Societies must take up that questionnaire with each member. They must be signed and in my hands before January 1st, 1926. Only those returned by January 1st will be considered.

"Note: The boomerang expense is not included in this statement."

Then the balance of this, your Honor, is merely a repetition of that summary which shows by initials, towns and initials, who paid, how much, and it runs, Ann Arbor, Mrs. H. M., $100; Mrs. D. U. B., $5.00, Mrs. L. D. $10," and so on, setting up the same amounts that appear in the report that is already in, and I do not think it would aid the case to read that into the record.

Q. (By Mr. Watkins): Mrs. Lutz, you say that you received this report or a similar report?

A. Yes.

THE COURT: That one you have been reading is No. 23.

MR. WATKINS: 23, your Honor.

THE COURT: Is there any date on it?

MR. WATKINS: It is prefaced "A Classified Summary, Statement November 1st, 1925." It covered all the period from August 1st, 1924, to November 1st, 1925, a year and two months.

Q. (By Mr. Watkins): Now, Mrs. Lutz, did you understand upon reading this report what this "un- [290] paid overhead" meant?

A. I think I do. I don't know.

Q. And what was it?

A. Why, he was to get $500 a month, and then there was not enough money collected to pay him $500 a month. It was added up until such money was gotten.

Q. So that the unpaid overhead was $500 a month salary?

A. Yes, sir.

Q. Now, the third item on these expenditures, the second item, is overhead August 1st, 1924 to November 1st, 1925, 15 months, $7,500.

A. Maybe I had that, but I was mixed. Let me see them and I can answer you.

MR. McARTHUR: Just a minute, I did not get the witness' answer to the previous question. Will you give me that?

(The last answer was read by the reporter.)

A. The first one what was not paid was to straighten up that account.

Q. The first item is back unpaid salary, and the next item.

A. Was the salary?

Q. Of $500 a month for that 15 months period?

A. Yes, sir.

THE COURT: For the same thing, only for different periods, do I understand her?

MR. WATKINS: Yes.

THE COURT: All right. [291]

Q. (By Mr. Watkins): We next come to an item in this report, Mrs. Lutz, maps, special service, records, books, etc., $11,017.81. Did you at any time ever see any of the maps?

A. I did not.

Q. Did you ever know of any special service?

A. I did not.

Q. Did you ever see any records?

A. I did not.

Q. Did you ever see any books?

A. I did not.

Q. So that as to that $11,017.81, you do not know?

A. I don't know anything.

Q. How much was expended?

A. No, sir.

Q. Mrs. Lutz was it that you first heard of this book publishing proposition?

A. March, 1924, as I can recollect.

Q. Do you remember the circumstances under which you hear of that? Where were you, do you remember?

A. In my own home.

Q. And did you hear about it from Mr. Gridley or from some one else?

A. Yes, I think both, maybe, Mr. Gridley and Mrs. Wright

Q. You heard about it from Gridley and Mrs. Wright, is that so?

A. Yes.

Q. And what did they say to you about it? [292]

A. That we had called a meeting at my home, and previous to that they had had a big meeting in Detroit, and they had made an enlarged book of some kind, and it had passed over in Detroit, and he came on to Philadelphia and wanted us to pass on the same motion.

Q. And that was your first knowledge of any book publishing proposition?

A. The book publication, yes.

Q. How long, Mrs. Lutz, did you remain a member of this Society?

A. I guess two years ago, I can't just give you the idea.

Q. I don't hear you.

A. I just can't give you.

Q. Are you a member now?

A. No, there is no such a Society.

Q. Were you a member during the year 1928?

A. No.

Q. Were you a member at any time during the year 1927?

A. **I may have been. You would have to lead up to those facts for me to tell you that.**

Q. You think that perhaps at least a portion of 1927 you were a member?

A. Yes, sir.

Q. Do you know why it was that you servered your connections with this organization, yes or no?

293

A. Well, I began to wean when they did not make any more statements. That last one, the 15 months [294] or 14 months statements, the last of the series of statements stopped, but I did not break then exactly. I began to wean away from them.

Q. When the first eight statements came through and then stopped coming, you began to weaken?

A. Yes, sir.

Q. That last report was in August of 1924, and you say that you began to weaken at that time?

A. Yes, sir.

Q. When were you finally weak?

A. **Well, I would rather you would lead up,** and I can answer that question later when it comes to me, because it has been so long, I will tell you when I dropped out, **I dropped out and forgot all. I did not care to remember anything.**

Q. How long after that, have you any idea how long after that it was you severed your entire connection with the organization?

A. Probably a year and a half.

Q. A year and a half after August of 1924?

A. Yes, sir.

Q. So that to the best of your recollection, it was early in 1927?

A. Yes.

Q. Since that time have you ever had any conversation with either of these two defendants?

A. Since the time of those reports?

Q. Since the time that you left the organization? [295]

A. No.

Q. Did you subsequent to August, 1924, and your severing your connection with the Society early in 1927, have any conversation with either of these defendants?

A. The last of August of that year, we had another picnic, another family reunion.

Q. At the end of August, 1924?

A. Yes.

Q. And where was that?

A. Lenaway Park, Chester County.

Q. The same place the other picnic had been held?

A. Yes, sir.

Q. I will ask you whether or not Mr. Gridley made any talk at that picnic?

A. Yes, sir.

Q. Do you remember what he said at all? Yes or no.

A. Yes.

Q. And what did he say, the best you can remember?

A. **Why, he had come there about the loan money. He wanted loan money.**

Q. Loan money?

A. **Money to loan for this book.** Previous to this in the early part of the thing, there was no book brought up, except that when he got the documents, he would make a pamplet, or a small book, and that book entirely was his proposition. It did not belong to the Associa- [296] tion at all. The heirs had hired him to search for these documents, and naturally he had to compile in some way or other, and first it was compiled in a booklet form of some kind. That was the agreement with the heirs, but the change is his side of it, and he wanted a book out of it. He did not want a pamphlet. He changed it into a book, I don't know, 400 or 480 pages. That was not the heirs. That was his side of it, what he wanted done. The heirs did not care, just so that they got the documents, and they left him go ahead. He had his way with the heirs.

Q. In other words, he persuaded the heirs that the book was the right way to do it.

A. Well, he had some object in view. I don't know just what it was, only that we had to have—we wanted the documents, and he said to put them in a 480 page book previous to that.

Q. Now, in August of 1924, at Lenaway Park, you say he brought up the subject of a loan of some kind?

A. Yes, he did.

Q. What did he say about the loan proposition?

A. He wanted the heirs to lend him $50 apiece around, or whatever they could a loan towards the publication of this I think, 480 page book.

Q. And did the heirs take to that proposition?

A. Some did.

Q. At that meeting at Lenaway Park?

A. Some did and sone did not.

Q. You were in which classes, "the dids" or [297] didn'ts"?

A. I gave him $50.

Q. Did you give it to Mr. Gridley personally?

A. No, I sent the check to him with the other amounts of money.

Q. Did he say why he needed this $50 loan from the members?

A. There was not enough money coming in to run the society, to run the society and publish the book, too, and this loan would allow the heirs to publish the book that he suggested.

Q. Do you know at all how much money was sent by you as secretary of the Society to Mr. Gridley in connection with that loan proposition?

A. Just the loan, or the entire amounts?

Q. No, just the loan.

A. I can tell you in off dollars the entire amount, but I can't tell—

Q. I did not hear that.

A. I can tell you just off a few dollars shy of the entire amount, but I can't tell you just the loan money.

Q. And in round numbers, how much money did you spend altogether for books and everything else?

A. About $2,000.

THE COURT: That was from the Philadelphia Society?

A. Yes, sir.

Q. In connection with this loan proposition, was this a loan or a gift?

A. This was a loan to be returned double.

Q. To be returned double? [298]

A. Yes, sir.

Q. In other words, everybody that gave $50 was to get a hundred back?

A. Yes, sir.

Q. Was there any explanation by him as to where this double amount was to come from?

A. These books were to be sold, but how and why no one knew at that time. The money that they would reap from them would pay back the loan.

Q. Did either Mr. Gridley or Mrs. Wright say anything about where they were to share in the price of the book?

A. I suppose they would, share, but I forget just how much they were to share.

Q. You think they were to get something, but you don't know?

A. Just how much, 15 per cent, or something like that. I could not say for sure.

Q. You think 15 per cent?

A. Yes, sir.

THE COURT: Who got the residue, the remainder?

A. It was to go to the National when it was formed.

Q. That is the 85 per cent was to go to the National when it was formed?

A. Yes, but understand, none of this was the original agreement with the heirs. This was after.

Q. Now, you say, Mrs. Lutz, that you did send in $50 as your part of the loan? [299]

A. I sent in $50 and so much a month afterwards.

Q. How much a month afterwards?

A. I think it amounts up to $96.

Q. Altogether?

A. I forgot whether it is $50 and $96, I think it is $50 and $96 besides.

Q. Did you ever get your loan money returned to you?

A. I did not.

Q. Do you know of your own knowledge of anybody else who loaned money?

A. I do not.

Q. What is it?

A. I do not.

Q. You do not know anybody else who loaned it?

A. Who loaned the money?

Q. Yes,

A. My mother, and she is not an heir.

Q. Do you know how much your mother loaned?

A. $25.

Q. How much?

A. $25.

Q. Do you know whether or not your mother ever got her $25 back?

A. She did not.

Q. Did you ever get a book?

A. No.

Q. Do you know anybody who ever did get a book? [300]

A. No.

Q. Mrs. Lutz, I will ask you whether or not this $50 loan that you made was in payment of a book?

A. No, it was not.

Q. Did you at any time ever make any payment for a book?

A. Yes.

Q. How much did you pay for the book?

A. $25.

Q. Twenty-five dollars, and you never got any book for that $25?

A. No.

THE COURT: Did you get a receipt?

A. Yes, I think so.

THE COURT: You got a receipt?

A. Not from Mr. Gridley direct, Mr. Bogardus.

THE COURT: Did you get a promissory note for that loan?

A. No.

THE COURT: What did you get for that?

A. Nothing.

THE COURT: Nothing at all?

A. Just the statement.

THE COURT: How?

A. Just the statements.

THE COURT: What statements?

A. In that last statement.

THE COURT: You did not get anything?

A. No, only I paid him the money. I collected [301] my check and got my check back through the bank.

THE COURT: You did not get any note or mortgage or bonds or anything?

A. No, nothing at all.

Q. (By Mr. Watkins): Now, Mrs. Lutz, you said you paid $25 for a book?

A. Yes.

Q. Was that to purchase a book?

A. That was to purchase one of the books.

Q. For your $25, you were supposed to get one book?

A. Yes, sir.

Q. Did you at any time make any payments to have the book published in addition to that $25, or was that to get the book published?

A. That was to get the book published. No, that was for the book. That was for the book.

Q. That is for your copy of it?

A. For my copy of the book.

Q. And that was a straight sum that the book was to cost you?

A. That is what they made it later on.

Q. What did they do first?

A. Well, quite a bit intervened between then.

MR. CHOLETTE: I think, your Honor, this ought to be limited to what conversation was had with these parties. I think it is getting pretty general as to what they did, and what was generally done. I think it ought to be limited what these people said and talked over with [302] them. There are a great many thousand people involved in this, and I do not think what somebody else may have told her what it was for would be proper.

THE COURT: I will sustain that position.

Q. (By Mr. Watkins): You are not talking now, Mrs. Lutz, about anything that you did?

A. That is all, the $25 was for my own book.

Q. And you did pay that $25 for your own book?

A. Yes, sir.

Q. Did you ever at any time make any other payments for the book other than the loan?

A. The loan and the $25, one loan $50, and what I paid each month was to help towards the publication of the book, and then I paid $25 for my own book again.

Q. Did you at any time ever hear Mr. Gridley tell what kind of book this was going to be, how it was to be bound, or anything of the sort?

A. Yes, I did.

Q. And when, if you remember?

A. March, 1924, as I can recall it as near.

Q. He told you what the book was to look like, how it was to be bound and so forth?

A. Yes.

Q. And what did he say in that connection?

A. He had been in Detroit and they passed a motion through the Detroit society to make a larger [303] book with the last word.

Q. What.

A. A larger book with the last word, and he came to Philadelphia, and he asked Philadelphia to agree to it. It

passed the Philadelphia society, but there was dissension afterwards.

Q. So that after Mr. Gridley said that he had been in Detroit and the resolution had been passed in Detroit, he then came to Philadelphia and wanted them to pass a resolution that would have an amen in it?

A. Something on that order.

Q. That was to be all inclusive, was that it?

A. Yes, sir.

304-308

By Mr. Cholette: Cross Examination.

Q. As I understand it, so it may be a little [309] clearer, at first there was a national association, wasn't there?

A. Yes.

Q. And later on there was a new association formed, isn't that true? That is some time in the latter part of 1923 or early in 1924, wasn't there a new association formed?

A. I don't know just how to answer your question.

Q. I would like to find out from you. You made mention of the national as though there were two associations. There were two different associations, weren't there?

A. Yes.

Q. Now they were not both in existence at the same time, were they?

A. No.

Q. Well, which one is the first, the national?

A. The national first.

Q. What was the name of the other association?

A. The Wilkes-Barre association was all I knew. After the break with Roat, you mean?

Q. Yes.

A. That is all I ever knew.

Q. Weren't they called also the Advocates of Justice?

A. I could not tell you. No, I don't think so.

Q. As far as Philadelphia was concerned, wasn't it really to carry on that same association, the same society in Philadelphia?

A. The same as what?

Q. As the national, the second one?

A. They went in with Mr. Gridley on the same terms to make out reports and to gather documents [310] and things like that, just the same as they did with Wilkes-Barre.

Q. And wasn't that true with the entire society in Philadelphia? Didn't they all follow Mr. Gridley after he severed his connections with the national?

A. Philadelphia was just one little bunch. There was a little bunch here and a little bunch there.

Q. Did you ever see the constitution and by-laws marked Exhibit 11?

A. I did in Wilkes-Barre, when the national—

Q. Do you know, Mrs. Lutz, whether or not that was adopted by the first society, that is the national, or was it adopted by the second society after Mr. Gridley broke away?

A. It was never adopted by the second. I don't know about the first. It must have been the first one. It was not the second.

Q. Now referring to Government's Exhibit 23. There is a charge for expenses, trips, $2,473.99. Do you know of some of the trips that were taken by Mr. Gridley during 1923?

A. No.

Q. And you do know that he was in Pennsylvania?

A. Yes. Outside of that, I don't know any further, not that I can recall.

Q. How many meetings did you attend in Pennsylvania when he was present, Mrs. Lutz?

A. When he was present? He attended two picnics, one was for the national, I suppose, and one [311] was for the other.

Q. Do you know of any more meetings he attended?

A. He was at my house.

Q. He was at Philadelphia?

A. Yes.

Q. It is a fact, is it not, Mrs. Lutz, that Mr. Gridley traveled a great deal during that period of a year?

A. I could not answer you, only to Philadelphia.

Q. Do you know when Mr. Gridley severed his connections with the old national?

A. Somewheres around the 13th of October, as far as I know.

Q. 1923?

A. Yes.

Q. Now, I understood you to state, Mrs. Lutz, that the first you knew about the publishing of a [312] book was in March, 1924, is that correct?

A. Well, there was talk, a little bit before that, but not a whole lot. I never knew a whole lot about the book, because I was in it to get the documents. I had no interest in any book whatsoever. **The interest came from his side. He wanted to back the heirs in general. I did not want the book.**

Q. Didn't you know before March, 1924, Mrs. Lutz, that Mr. Gridley was insisting that the matter be limited to the publishing of a book?

A. Well, frankly speaking, I did not think he had a right to insist on anything.

Q. Well, there was dissention—

A. Yes.

Q. —between Mr. Gridley and some of the members of the committee with reference **to the publishing of your book, isn't that true?**

A. Yes, there was.

Q. And wasn't that the thing that led to the resignation of Mr. Gridley in October, 1923?

A. No, not to my knowledge.

Q. Isn't it true, Mrs. Lutz, that the question of publishing a book was discussed and you wrote about it as early as June, 1923?

A. I don't remember.

(Exhibit 24 marked by the reporter.)

Q. Is this your signature and the letter you [313] wrote, Mrs. Lutz? That was mailed out by you, wasn't it?

A. Yes.

MR. CHOLETTE: I offer this in evidence. To save time I will ask you about this one here. Will you mark that?

(Exhibit 25 marked by the reporter.)

Q. Isn't it true of exhibit 25 was signed by you and sent out in November, 1923, if you just look through it hurriedly, Mrs. Lutz?

A. Yes, I think so.

MR. WATKINS: No objection.

MR. CHOLETTE: I will read this in the record, Exhibit. 24.

"Headquarters of National Committee of Anneke Jans Bogardus Heirs, Wilkes-Barre, Pa. William Post, President, 422 Delmar Street, Hannah G. Lutz, Secretary, 343 Fountain Street; W. Weaver, Treasurer, 4124 Lauriston Street, Philadelphia Branch, 343 Fountain Street, Roxborough, Philadelphia, Pa. Mrs. Anna Conn. Your note and check

came while I was in Wilkes Barre. I have learnt that the case is about ended. Please make yourself square with Wilkes-Barre if you are not, the money will go good toward the finish. There is to be a series of three meetings to make the final one, I will attend, a meeting of the national officers and two at my home, the first two will be in June."—

I did not read the date, your Honor, June 3rd, [314] 1923, was the date of the letter.

THE COURT: June what?

MR. CHOLETTE: June 3, 1923. **"The second meeting the first at my home, will be very necessary to all heirs,** each heir is responsible **to pay for three books now at the printers which contains a full account of the case.** They will be a dollar a piece and it is your duty to sell these books to get your money back. You will see in the end they will not cost you anything, and the $3.00 will go toward a fund we are trying to raise. If you have paid all to June 1st that we have asked, and that of the books, your expenses will be at an end and we will not need any more money, everything will be over by September 1st, even then we hope to have some divided. **You can sell those books to** any person, they don't have to be an heir and a book one will want to keep. The last meeting will be to get your power of attorney and only heirs who are paid to date will get that paper which will entitle them to a share. If you have not paid $25.00 in all you substract what you have and you owe the balance except the books."

"You must have an attorney and a power of attorney to get your share, and of course those who have joined in with this branch office and formed the branch organization will have all of that and will be taken care of for the sum of $25.00 they have paid, is that not lenient enough.

"Very truly yours, [315]
Hannah Grow Lutz."

Notation: "You are square to June 1st. Thanks."

(By Mr. Cholette): Do you recall receiving a copy of this letter?

A. No, I don't. I may have done, but it is five years ago.

316

Q. "To the heirs of Anneke Jans Bogardus of the United States and Canada. From the Philadel- [317] phia Branch Society, 343 Fountain Street, Roxbor- ough, Philadelphia."

THE COURT: What is the date of it?

MR. CHOLETTE: The date is at the bottom, dated 11-10-23. That is 1923. 11-10-23.

"There has been some dissension between the National Committee and our New York representative, and we of the Philadelphia society feel that unless some of us come forward and take the helm, it will end disastrously for our cause. We are desirous that this dissention shall not have the effect of breaking up our order, or changing the plans made, or interrupting the work of publishing the contemplated book, containing our documents, records and proofs, of which headquarters at the time the plan was evolved some six months ago, heartily approved.

"The causes of the dissention are:

"Mr. Gridley refused to go before the heirs, with [318] a view of interesting their further financing of this cause, unless the National Treasurer would footwith issue a statement showing the amount contributed, by whom, and for what the money had been expended, and then to issue such statement every month.

"Mr. Gridley would not consent to deviate from the well considered plan to publish our record, and put this book on sale to the public, for the purpose of overcoming the present ridicule, and want of faith in the justice of our cause, largely due to want of knowledge on the part of the public as to what we are fighting for, and why, which plan we consider will give us not only the requisite finances for future action, but also public opinion the necessary foundation for a fair hearing in this matter. Mr. Gridley holds that the publication of this book, will do more for our cause than one thousand attorneys, and that any suit brought without it will be premature, and only result as many many others have ended in and 'I told you so.' "

"We heirs who reside in this section, have called a meeting of our heirs, to consider some plan whereby the work can proceed and we have obtained Mr. Gridley's consent to go on with the work, if the heirs will act promptly, so that he can proceed without interruption; for he states that he will not take it up again if he lays it aside. He will not give it more than six months more of his time."—

THE WITNESS: Not more.

MR. CHOLETTE: Excuse me. He will not give it [319] more than six months more of his time.

"We enclose a pledge herewith, which we wish each and every heir to sign, and assure us of their assistance to the extent of $15.00 each. We also wish to have each and every heir advise us of the amount they have contributed to this order since its organization in December, 1922, and by this means we shall find out exactly who has been supporting the National order, and to what extent; for we understand no such list has been kept at headquarters, and in the absence of the willingness to render a statement, we do not know just how much has been contributed, and by whom. From information we believe there are about 1,000 heirs members of the National Order, and if each will contribute $15.00 this undertaking can be a success and finished; otherwise all the money and time spent in this effort since December, 1922, will be lost.

"We approved of the stand taken by Mr. Gridley in regard to this matter, and we can assure you that all moneys sent to him will be reported, and a statement made giving you how it is expended and nothing more could be asked. The heirs are certainly entitled to that information no matter who handles the money. Mr. Gridley says this is how he handled the funds in this matter before.

"Now be sure and have your names registered with the Philadelphia branch of the society, so that we shall never again be in this position, where we have no list [320] of the contributors to this cause, and no means of finding out how much they have supported it. If you feel you cannot pay the full amount of $15.00, will you please indicate what you can do, so that we can get some idea of the amount available.

"Earnestly asking your financial support and prayers for our success and with good wishes to all the heirs in general, we are,

Yours very truly,
Pres. J. B. Livingston,
Ist Vice-President—"some initial "Ferris."

Q. Do you know what that name is?

A. Ida Ferris.

Q. "Ida Ferris." Second Vice-President, Ethel Rhodes. Treasurer, William Weaver; Secretary, Hannah G. Lutz, 343 Fountain Street, Roxborough, Philadelphia, Pa. Dated 11-10-23."

Isn't it true that this dissention between Mr. Gridley and the committee that existed for several months before this circular was sent out in refernce to the publication of the book?

A. No.

Q. You say it is not? If it was not, Mrs. Lutz, why did you stay in there as one of the causes of dissention—

A. I did not make that up. Mr. Gridley made that up.

Q. But you signed it with the other officers of the Philadelphia Society? [321]

A. We passed it for the thing to go on, just to please Mr. Gridley.

Q. Well, you were advised of what was in that circular when you got it, weren't you?

A. Yes.

Q. You read that before mailing out these hundreds of circulars, did you?

A. I might have seen it, but at the same time I might not have signed—that was on the paper.

Q. Did you write to Mr. Gridley objecting to it in any way?

A. **I don't remember.**

Q. Do you remember, Mrs. Lutz, when you joined the association signing a questionnaire?

A. **I don't remember.**

(Exhibit 26 marked by the reporter.)

Q. I show you this paper marked exhibit 26 and ask you if this is not a photostatic copy of questionnaire which you signed with your answers written in your hand writing? Do you recognize that as a photostat copy of your questionnaire?

A. Yes, but it says here, "Are you willing to solemnly pledge and promise to support so long as Mr. Gridley—

322

MR. CHOLETTE: I offer now exhibit 5. That she says was sent out by the Philadelphia office. [323]

MR. WATKINS: May I ask the witness some questions relative to this—

THE COURT: Yes.

Q. (By Mr. Watkins): Mrs. Lutz—

A. Yes.

Q. —did you personally write this letter?

A. I don't remember.

Q. You don't know whether you did or not?

A. No. Because some of those things were made by New York, or if we did why they were sent over [324] there for correction.

Q. If you wrote them you sent them to New York before you published them?

A. Yes, sir.

Q. And at last you did not do this printing yourself?

A. No.

Q. And I will ask you whether or not you have ever compared, if you did write the letter, this copy with the original letter?

A. No, I did not.

MR. WATKINS: Well, I will object to it then on that ground.

Q. (By Mr. Cholette): Mrs. Lutz, you did tell us, though, that these circular letters were mailed out under your direction from the Philadelphia office?

A. Yes.

Q. And these letters were broadcasted among the members, is that true?

A. Yes, I would not say I did, but it was among the members.

Q. But it was done by your organization?

A. Yes.

Q. Is that a fact?

A. Yes.

MR. CHOLETTE: I offer it, your Honor.

THE COURT: I will admit 5.

MR. CHOLETTE: A Copy of a letter from the Philadelphia Branch to G. Murray Roat.

Q. (By Mr. Cholette): Who was G. Murray Roat?

A. He was the president of the National Society. [325]

Q. Was he the man who testified here yesterday?

A. Yes.

THE COURT: Is that letter criticising him?

MR. CHOLETTE: Yes, your Honor.

THE COURT: Well—

MR. CHOLETTE: It contradicts the other questions he was asked yesterday.

THE COURT: What is the purpose of introducing them?

MR. CHOLETTE: I think it impeaches his testimony, your Honor.

THE COURT: **Well, I won't admit it for that purpose, because somebody got to be sworn; that would be no proof that those things in there are true. I will exclude it, not only as being now improperly proved, but not admissible for the purpose of impeaching him.** You might write a letter to me and accuse me of all manner of things; that wouldn't be any proof I done it; or I might do the same thing to somebody else.

MR CHOLETTE: **But my understanding, your Honor, was that yesterday the witness was shown this particular letter, which was then offered as exhibit 5, and asked as to the contents of it, which my recollection is that he denied it, but I want to show now by this witness that such a letter was written by her and circulated.**

THE COURT: **I don't think it is admissible for the purpose of impeaching the witness at all.** I will exclude it on both grounds. Whatever weakness there is in the proof, I was willing to consider that point, as far as the [326] regular routine, but here it is evidently a letter criticising somebody. It can't be used to impeach him. No proof of the things there stated at all.

MR. CHOLETTE: Well, this may not be proper, your Honor, and I don't want to go against the rulings, but I want to ask this question.

Q. (By Mr. Cholette): Did you have any dissention with Mr. Roat relative to his retaining certain funds, Mrs. Lutz?

A. Shall I answer it? Not with him personally.

Q. Well, didn't you accuse him of retaining $1,121?

A. Only when Mrs. Wright told me he had only turned in so much; not him, but may be Jones—between them. Mrs. Wright told me over the telephone that Mrs. Telsey had told them it was a told to them business that so much was turned it.

Q. Did you ever talk to Mr. Roat about it?

A. When I went up on October 13th and asked them about it and they showed me the books and files and the money was all right.

Q. When was that?

A. October 13th.

Q. What year?

A. 1923.

Q. This letter was, without introducing the letter, the letter, exhibit 5, was in 1924, wasn't it?

MR. WATKINS: I will object to it as long as it is not admitted.

Q. Well, you did send out a letter, didn't you?

A. Yes.

Q. And wasn't that letter sent out some several [327] months after October 13, 1923?

MR. WATKINS: Well, now, just a minute. I will object

to the question as not being in accordance with the fact. There is no testimony to the effect that this witness sent the letter out. She has testified that she does not know whether it is her letter or letter that she got from New York. **If it came from New York it was Gridley's letter. It wasn't hers.**

MR. CHOLETTE: I think it affects her credibility, your Honor; **the fact that she says she discovered this in 1923 and that a letter** was mailed out by her some several months later. I think would be proper.

THE COURT: I will exclude it.

Q. (By Mr. Cholette): This exhibit 27, which is marked for identification, whether or not that is a photostat copy of pledge of application signed by you?

A. It looks like it.

Q. That appears to be a copy of your signature?

A. Yes.

Q. And a copy of a pledge which you signed, is that correct?

A. Yes. We signed lots of pledges.

MR. McARTHUR: Your Honor, I desire to have the record show an exception to your last ruling.

THE COURT: You may have an exception.

MR. CHOLETTE: I am offering it because it is a photostatic copy. I will connect it up later. Will you mark this for identification, please?

(Exhibit 28 marked for identification by the reporter.) [328]

Q. Mrs. Lutz, just to get the record clear, was the original of this letter, which has been marked here as exhibit 5, mailed to Mr. Roat?

A. No, I don't think so.

Q. You don't think it was?

A. Not to my knowledge it wasn't. I don't know anything further about it only that the society mailed the letter.

329-330

Thursday, February 21, 1929
9:30 o'clock A. M. [331]

Court met pursuant to adjournment.

Cross Examination (continued). By Mr. Cholette.

Q. Mrs. Lutz, I think, before we closed last night I had asked you about a paper purporting to have been written by Mr. Gridley. You have no recollection of that at all, have you?

A. No.

Q. Did I understand that it was your claim that you wanted a contract from Mr. Gridley?

A. I did ask him for a written contract, in the very beginning.

Q. And you wanted something to show definitely the arrangement that was to be carried on, is that right?

A. I think that is right.

Q. When did you first talk about that?

A. Well, when he talked about going with the heirs.

Q. Well, when was that, 1923, or about when? Have you any recollection? [332]

A. Why, it was when we were discussing, that was about the time he came over to **Philadelphia, that Sunday.**

Q. Well, you see, that does not mean very much to the jury, unless you can express whether it was 1923 or in 1924 or when.

A. **Fall of 1923.**

Q. Fall of 1923.

A. Yes, about November, I suppose, November, or the latter part of October.

Q. Did you tell us when Mr. Gridley severed his connections with the Association?

A. Which Association?

Q. With the National.

A. I just do not just remember that.

Q. Well, it was the Fall, 1923, wasn't it?

A. Yes.

Q. Well, now, you did finally enter into a definite arrangement with Mr. Gridley about the publishing of this book?

A. I never did.

Q. You knew that one was entered into between you?

A. No.

Q. Never?

A. Never, only it was his suggestion.

Q. Well, was not there finally a time when you had agreed on a specific contract with relation to the publishing of that book?

A. No, positively, no.

MR. CHOLETTE: I offer this in evidence. I would [333] like to have it marked first. Mark that "Exhibit 29."

THE COURT: Exhibit 29, I think.

(The document was thereupon marked Exhibit 29 by the Reporter.)

Q. Isn't it also a fact, Mrs. Lutz, **that after Mr. Gridley had severed his connections with the National, that you urged him to come back into the work?**

A. Surely I did.

Q. You wanted him to carry on?

A. Sure.

Q. Do you recall writing this letter here (handing document to the witness.)

A. Yes, I wrote that, but this letter has reference to things that he told us about that was so.

MR. CHOLETTE: I offer this in evidence.

Q. I understand, Mrs. Lutz, that it is your claim that Mr. Gridley never consented to any specific contract in relation to your publishing of that book.

A. I asked him if—because a contract, that is void, without both signatures.

Q. Do you remember some talk about 15 per cent?

A. Yes, I remember that.

Q. There was a great deal of correspondence between you and Mr. Gridley?

A. He never signed anything.

Q. You knew where it came from. [334]

A. At least I thought so.

THE COURT: I am not sure whether you and the witness are in complete understanding as to whether there was an oral agreement as to the arrangement, or whether she means she never got any signed agreement. I don't mean she does not understand, but I am not sure that the questions and anwsers are in complete understanding.

MR. CHOLETTE: I don't refer to the written contract at all. I do want to show, however, that there was a definite understanding as to just how the matter should be handled.

Q. In order to make it clear on the record: Wasn't there a definite understanding between you and Mr. Gridley.

A. Not between myself, no, I personally was dissatisfied.

Q. Do you know that there was an oral contract between Mr. Gridley and the Committee relative to the publishing of that book?

A. Which Committee, the National?

Q. The Committee of the National.

A. No.

MR. WATKINS: Your Honor, I will object to that question as calling for a conclusion. No objection to Exhibit 29.

MR. CHOLETTE: Exhibit 29. "Roxborough, Philadelphia, 2-20-24—"

Q. That is February 20, 1924?

A. Yes.

MR. CHOLETTE: (Continuing): [335]

Mrs. Lillian M. Fathers,
1516 Quincy Avenue,
Racine, Wisconsin.

Dear Friend:

Yours of 2-12-24 received. Always glad to hear from any of the heirs. First, Mr. Gridley is not under bond, he is under contract. If the heirs will do their part, he must do his, but if, if the heirs fail to finance the proposition or the cause, he then will not have to fulfill his part of the contract. Therefore, it is necessary for every heir to put their shoulder to the wheel and push. The treasurer of the New National, who will take care of 85 per cent of the proceeds from the sale of books and should be bonded. Roat was never under bond. The books may go on the market, and on the report, shows a proceeds collected of $15,000, and not book according to contract, after that it will take about 6 months to make a final—it does not seem to me that Teft is for Gridley. I am afraid he is carrying water on both shoulders. **No bunch of heirs have to make this far of a progress.** * * * *

Let me urge you and all concerned to put their shoulder to the wheel * * *

Hannah G. Lutz."

Q. What was this 85 per cent you make reference to in that letter, Mrs. Lutz? [336]

A. The 85 per cent that the Association was to have.

Q. Yes.

A. But that letter that is different altogether. We were coached to write such letters as this.

Q. You wrote this letter in your own handwriting, didn't you?

A. I know I wrote it. But we were told those things, there would happen or transpire or something else, that is the reason we wrote them.

Q. This letter was not suggested to you, sent to you for you to sign?

A. It was suggested, that is something which never transpired, afterwards, we were promised those things.

Q. This was November, 1924, wasn't it?

A. That is all right. Those were all promises.

Q. This was after Mr. Gridley had severed his connection with the National, wasn't it?

A. Yes.

MR. CHOLETTE: That is all.

MR. WATKINS: Let me have Exhibit 28.

REDIRECT EXAMINATION

BY MR. WATKINS:

Q. Mrs. Lutz, you have said that you knew that the National organization, with headquarters in Wilkes-Barre had broken with Mr. Gridley.

A. Yes.

Q. And you say that happened some time, you [337] think, in October of 1923?

A. It was.

Q. Did you ever at any time have any conversation with Mr. Gridley relative to why he had broken with that organization?

A. I did.

Q. And what did he say in that connection, as well as you can remember at this time.

A. It was in one of the lobbies in the hotel in November.

MR. CHOLETTE: Just a minute. Will you fix the time and place?

A. In October of 1923 or the first of November, 1923. It was in the lobby of one of the New York hotels. Mr. Gridley had said why he broke with Wilkes-Barre.

Q. What did he say?

A. First, because they were not giving him enough money to carry on what he had to do; and second, because they had planned some sort of a plan, the National had did this—**that he was going to show his hand to Lucking, a lawyer here in Detroit, or Michigan somewheres.**

Q. **You say that he was going to show his hand to Lucking?**

A. **Yes.**

Q. By that do you mean Mr. Alfred Lucking, the attorney here?

A. Yes.

Q. Did he say anything in connection with that matter?

A. He said he would not give his plans and books and everything that he had pertaining to the case, [338] he wanted the honors himself.

Q. Now, when was it that you became actively engaged with Mr. Gridley in this work?

A. About that time he had poisoned our minds against the National Society.

MR. McARTHUR: Now, if your Honor please, I object to that, and ask it be stricken.

MR. CHOLETTE: Just a moment, your Honor, it is a conclusion of the worst kind.

THE COURT: I will strike out that statement.

Q. You say it was in about October, the end of October or November of 1923 that you became active with it?

A. Yes.

Q. And this was just after the break that he had with the National Organization?

A. It was.

Q. Did he say anything to you at any time with respect to your organization working with him?

A. Well, we had made a sort of verbal agreement. I did not want him to drop out you see, because we had put money in it, if he was not going to work with Roat, he could work with some one else. His only objection was first with Roat, that I know of.

Q. Well, now, you have testified that he came to your house at least on two occasions. [339]

A. Yes.

Q. Now, how did he happen to come to your house? Did he say anything to you prior to his arrival?

A. Well, that Sunday we were over to New York, he made arrangements to come over the following Sunday, or the Sunday after. I forget which one, but he came over in the next several weeks, and he said he would think the matter over, whether he would go with the heirs or not.

Q. I will ask you whether or not at any time subsequent to that, he did tell you that he would go with the heirs.

A. He did when he came over.

Q. On this first time on a Sunday?

A. Yes.

Q. And what did he say in that connection?

A. He said he would go with the heirs, with the same basis that he went on with Wilkes-Barre, that he would make a report out once every month, and he was to get $500

a month and his expenses, and he would search datas, and the likes of that. Further than that I cannot tell you.

Q. I will ask you whether or not he made any statements relative to what your organization was to do.

A. He did from time to time.

Q. What did he say?

A. He told us what to do and what not to do.

Q. What did he tell you to do?

A. There was so much, I really could not tell you [340] what. And he would dictate letters or tell us letters were to be written, and he would send us papers to send out.

Q. Did he tell you things not to do?

A. Yes, he told us not to do things, too.

Q. What did he tell you not to do.

A. Why, later on he told us to forget about the lawsuit.

MR. CHOLETTE: Will you read the answer?

(The answer was thereupon read by the Reporter.)

Q. About when did he tell you that?

A. Well, these papers will show, they are on papers, you know, where he mentioned, saying that we should forget about lawsuits.

Q. You don't remember of your own recollection.

A. No, I don't remember.

THE COURT: You say he could get it without lawsuits. What did he say, would he get—

A. Forget about lawsuits.

Q. THE COURT: Oh, forget about lawsuits?

A. Forget about lawsuits.

THE COURT: Did he give you any instructions about the minutes to keep?

A. He told us not to keep any minutes.

Q. (By Mr. Watkins): He told you not to keep any minutes?

A. Not to keep any minutes.

Q. Now, in your letter of the 20th of February—

THE COURT: Did he tell you why? [341]

A. Because nothing would show up then.

Q. (By Mr. Watkins): In your letter of the 20th of February, 1924, you say Mr. Gridley is not under bond, he is under contract.

A. Yes, sir.

Q. Did you ever see at any time any contract with Mr. Gridley?

A. He would give us papers to sign, and we were under contract with him, but he was not under contract with us, and a contract is void without those signatures.

Q. Did you ever see any contract?

MR. CHOLETTE: Just a minute. I want the last answer stricken, your Honor, for the reason it is a legal conclusion.

THE COURT: I will let it stand.

MR. CHOLETTE: I will take exception.

Q. Did you at any time ever see any contract between your organization and Mr. Gridley, that was signed by Mr. Gridley?

A. No, I never saw his signature.

Q. At any time?

A. No, I could not identify it.

Q. Now, during this period of time that you were working with him, you did have a great deal of correspondence with him?

A. I did.

Q. And you say at no time did you ever see his signature?

A. Letters were unsigned.

Q. I will ask you whether or not you ever had any conversation with Mr. Gridley relative to the [342] not signing of letters.

A. Not any correspondence, but just a short slip of paper where he said.

Q. But you never talked it over with him personally?

A. No.

Q. After you became associated with Mr. Gridley, as you have testified, did you, as secretary of the Philadelphia Organization, have any correspondence with other organizations, relative to joining the Association.

A. We did, various ones that was connected with him.

Q. I did not hear that.

A. We did various ones that was connected with him, there were a number, one, two, three, four, wherever they were—Detroit, Seattle, Los Angeles, Buffalo.

Q. You say you did correspond with those organizations?

A. With some of them, yes, that was the names of the Associations.

Q. Do you know whether or not at any time you, as secretary of that organization, had any correspondence with the Detroit organization?

A. Yes.

Q. And with whom did you correspond here?

A. Mr. Page.

MR. WATKINS: That is all.

RECROSS EXAMINATION

BY MR. CHOLETTE:

Q. Mrs. Lutz, I think yesterday, and also this morning, you made reference to a $500 per month. [343] Wasn't that $500 per month to cover overhead expenses in New York City?

A. That was his salary. He could do as he pleased with it.

Q. Don't you know, and didn't Mr. Gridley tell you that $150 per month out of that $500 went to the payment of rent of premises that were occupied?

A. That was his business, not ours.

Q. Read the question. Will you answer my question, kindly.

A. There was no agreement to that, that $500 was his.

Q. Do you know who paid the rent in New York City?

A. I do not.

Q. You know that there were premises there that were regularly occupied, do you not?

A. There were, they are renting quarters, as far as I know, it was rented quarters.

Q. Did you ever go to the place that some of the witnesses made reference to as a loft?

A. No.

Q. When you went to New York City, you saw they had their residence, did you?

A. No, I did not.

Q. Where, at the hotel?

A. Hotel, and in the Pennsylvania Station.

Q. Don't you know that a stenographer was regularly employed to take care of the stenographic work?

A. I don't know anything about what happened [344] in New York City.

Q. Do you know who paid that stenographer?

A. I do not.

Q. Mr. Gridley told you about talking to Mr. Lucking, an attorney in Detroit, is that right?

A. Yes.

Q. You do know that Mr. Gridley came to Detroit to interview Mr. Lucking, don't you?

A. I don't know only this that he said he was going, that is all.

Q. Didn't Mr. Gridley tell you when he came to Detroit

and did spend considerable time with Mr. Lucking with reference to this whole situation?

A. I don't remember that he told me anything like that, only I know he was going.

Q. You testified a little while ago, Mrs. Lutz, that later on, "he told us to forget the lawsuits." That is correct?

A. Yes.

Q. About when was that time?

A. I couldn't tell you, the papers would show that, I would have to go over the papers.

Q. It was in 1923 or 1924?

A. I don't remember, it was not in 1923 that I remember.

Q. Your best judgment was it was in 1924?

A. Later on.

Q. About when? Will you fix the time as close as you can?

A. I couldn't say, I would have to look over papers. My papers are destroyed. [345]

Q. Was it before 1925?

A. Oh, yes.

Q. Was it before 1925, is that true?

A. Yes.

Q. Before 1925. So, more than three years ago then, Mr. Gridley told you to forget lawsuits, is that true?

A. I don't know much about it, in the last three years—

Q. Well, I say, more than three years ago you know that Mr. Gridley told you to forget lawsuits, is that true?

A. Yes, but that was not the first arrangement.

Q. I am not asking you about that, Mrs. Lutz. That is a fact, is it not?

A. He said that was his advice.

Q. That was given you more than three years ago?

A. I think so.

Q. Was that given at a meeting that you attended?

A. I don't know.

Q. Was that given to you personally in a conversation?

A. I don't think so. It was in the papers.

Q. You don't think so.

A. It came through the mail.

Q. That was part of the papers and communications he sent out, is that correct?

A. Yes.

Q. Did you ever attend any of these meetings as they were held by the Association? [346]

A. Well, right here in Philadelphia or Pennsylvania.

Q. Did you ever attend any of the meetings at Wilkes-Barre?

A. The National.

Q. Which?

A. You didn't say which one.

Q. Well, I mean the National.

A. Yes.

Q. Weren't there minutes taken of those meetings?

A. But did not see them.

Q. You told us a little while ago that the instructions were not to take any minutes of meetings. Is that true?

A. Just of our own Association.

Q. Well, the meetings you attended at which Mr. Gridley was present, you think no minutes were taken, were they not?

A. I couldn't say, Mrs. Wright was writing something, I couldn't tell you what she wrote or anything. There was no minutes. I didn't hear any minutes or anything at all.

Q. Don't you know, Mrs. Lutz, that minutes were taken of every meeting that you attended of the National Association?

A. I only attended the one, the other one, there was no meeting to it.

MR. CHOLETTE: I would like to have this marked. [347]

(This paper was marked Defendant's Exhibit No. 30.)

Q. Was this paper ever shown you? Just read it over hurriedly and recognize it if you can.

A. I don't believe so.

Q. You have never seen that?

A. I never saw that before.

Q. I am showing you now Exhibit 30?

A. I never saw that before.

(The paper was marked Defendant's Exhibit No. 31.)

Q. I show you Exhibit 31 and ask you if you ever saw those minutes?

A. I never saw any minutes of the National.

Q. Were you present at a meeting held at Kingston, Pennsylvania, on the 9th day of June, 1923?

A. Yes, just as an onlooker, not as a member.

Q. Do you recall that minutes were taken of that meeting?

A. I saw writing being done. What they were, whether they were taking minutes or not, I don't know.

Q. So if I got the impression, Mrs. Lutz, that you stated the minutes were not taken, I was mistaken?

A. Yes, you were mistaken, but in our society, we were told not to keep any minutes.

MR. WATKINS: I submit that is not what she said, what she testified was that they were instructed not to take minutes.

MR. CHOLETTE: I would like to have this marked "Exhibit 32." [348]

(A paper was marked "Defendant's exhibit 32.")

Q. (By Mr. Cholette): I will show you exhibit 32 and ask you if you ever received a pamphlet like that?

A. I think one came through the mail from somebody.

Q. Can you recall getting one like that?

A. Not from Mr. Gridley.

Q. You did obtain one?

A. It came through the mail.

(A paper was marked "Defendant's exhibit number 33.")

Q. I will show you exhibit 33 and ask you if that is not a record of resolutions which were sent out by your office in Philadelphia?

A. Do I have to read it all? Is it necessary to read it all? Because I have forgotten about it.

Q. Have you read sufficient so that you recall?

A. Well, there was something like that.

Q. That this was mailed out by your office in Philadelphia?

MR. WATKINS: What do you mean "This?"

MR. CHOLETTE: Exhibit 33.

Q. Is that correct?

A. Yes, I think so.

Q. And that was sent out to the members under your supervision, is that right?

A. Well, I don't know whether they made it over in New York, or whether we sent a copy over to be fixed up, or they made it, or what happened to it, but it was sent out to our society. [349]

THE COURT: Where was printing of that kind done?

A. Well, once in a while we did it ourselves, after having the copy.

Q. (By Mr. Cholette): But you do know this copy, or copies exactly like this, printed copies, were mailed out by the Philadelphia office?

A. As far as I have read.

Q. Now, do you know if that was printed in Philadelphia or not?

A. It may have been, and it may not have been. I forgot.

MR. CHOLETTE: I offer it in evidence. She says it was mailed out by their office under her supervision.

BY MR. WATKINS:

Q. Mrs. Lutz, do you know actually of your own knowledge whether or not this particular paper or copies exactly similar to this were mailed out in Philadelphia?

A. I would have to study it down to make positively sure, and then even so, I have forgotten entirely about the paper.

Q. So that you are not sure that this particular sheet, or one similar to it, was mailed out?

A. We did make several, maybe two or three different papers of that kind out, but I could not say whether that was one of them or not.

MR. WATKINS: Then I will object to its admission.

MR. CHOLETTE: I think I will withdraw it and not spend any more time on it. I think that is all. [350]

REDIRECT EXAMINATION

BY MR. WATKINS:

Q. Mrs. Lutz, as I understand your testimony, you never were in this so-called loft of Mr. Gridley's in New York.

A. No.

Q. And you do not know whether there was a factory connected with it, or what the situation was?

A. I don't know anything about it.

Q. As to rentals, you do not know who paid them, or anything about it?

A. I don't know.

Q. Mrs. Lutz, at any meetings at which you were in attendance, at which Mr. Gridley and Mrs. Wright were in attendance, did you see any minutes taken?

A. Not that I would think were minutes.

Q. Well, was there anybody there taking, doing any writing?

A. Yes, there was some, there was lots of people, anybody that wanted to take minutes, I guess did it on the sly, even if they did not want them to take it.

Q. On the sly?

A. Yes, there was people would be sitting back that would write anyhow.

Q. Was there anybody at any of those meetings whom you say appeared to be authorized to take them?

A. I don't think so. [351]

MR. CHOLETTE: Just a minute, that certainly is a conclusion, "Appeared to be authorized."

Q. I will ask you this. Withdraw that other question. At any of the meetings that I have mentioned and you were present and where these defendants were present, was there any duly appointed secretary?

A. No, not to my knowledge.

Q. After any of these meeting, Mrs. Lutz, did you ever see any mimeographed or typewritten or printed minutes of the meetings that you attended?

A. No, I did not.

MR. WATKINS: I think that is all.

RECROSS EXAMINATION

BY MR. CHOLETTE:

Q. Mrs. Lutz, weren't these particular papers, these various papers I showed you a few minutes ago, called to your attention and shown to you?

MR. WATKINS: She has already testified that she never saw them.

Q. Well, this meeting that you attended on June 9th, in Kingston, Pennsylvania, don't you recall that the members' names were called, a roll call was taken?

A. Well, I did not know what they were, whether they were roll call, or what they were.

MR. WATKINS: I will submit with respect to the meeting in Kingston, Pennsylvania, on the 9th of [352] June, 1923, this witness says she was not a member of the society and was not a party to the meeting and had no voice in it, and was merely a visitor. I will submit that with respect to that meeting, this witness can't testify.

MR. CHOLETTE: Now, your Honor, the witness testified that she was present at that meeting, and later in the absence of the Court she testified that at the meeting she attended, no minutes were taken and no roll call taken and I want to show what transpired at that meeting.

THE COURT: I will let her answer, if she remembers, if she does?

A. I don't know anything about that part of it.

Q. (By Mr. Cholette): You have forgotten that part of it, Mrs. Lutz?

A. Yes.

Q. Why did you tell us a few minutes ago in answer to a question of Mr. Watkins' that at the meeting you attended no roll call was taken?

MR. WATKINS: I will submit that the witness did not testify to that because I did not ask her that question.

Q. All right, I will ask you now. At the meeting you attended in Kingston, Pennsylvania, on June 9th, **don't you recall that a roll call was taken?**

A. No, I do not, There were names mentioned but I don't know whether it was a roll call or what it was?

Q. You do remember that names were called? [353]

A. No, not exactly as a roll call. We were introduced.

Q. Names were mentioned?

A. We were introduced around, so and so, and so and so.

Q. And don't you remember that someone was sitting there taking minutes of everything that was said?

Wilkes-Barre National

With my appeal from the judgment of conviction argued, it would be unfitting for me, pending the decision, to discuss at length the testimony of the turncoat witnesses, secured by the government from the present organization, other than to submit various documents bearing their signature, evidencing my caution and insistance that, so long as I was connected with them, they must forget suits, settlements, and desist in making any future plans, pending my work on the book, at which time my relations would terminate, and my right to demand restraint of their talk and actions at an end.

The testimony abounds with the termination of my relations with the Wilkes-Barre National; the severance of all connection with them, the moment I learned of the collection of moneys under promise of a suit. On what theory of law their testimony was competent or proper in this case, is beyond my comprehension.

In view of this admission of evidence, I feel justified in a summation statement of this testimony.

G. MURRAY ROAT, government witness' testimony, that

I was to prepare and put this case in the New York courts, is absolutely contradicted over his own signature, in his letter to me, of date May 27th, 1923, a facsimile reproduced copy of which has been given previously in these pages, which letter was penned by him the month following our first meeting or interview.

ROAT'S testimony that I was to prepare and put this case in the New York Courts, is further contradicted by his admission that he was not present when the arrangements were made with me, and that he did not meet me until the Spring of 1923, five months after the arrangements were made; that one Thomas Grover, an attorney, represented the Wilkes-Barre organization, and was authorized by that body to make the arrangements with me.

Roat's testimony, that he organized the National in Wilkes-Barre, December 8th, 1922, before he had met Gridley, refutes the charges in the indictment that the defendants organized these people, and also refutes the opening statement made by the United States District Attorney Watkins, that these defendants organized the National at Wilkes-Barre.

Roat's testimony, first, that arrangements were made with me in the Spring of 1923, that I was to prepare a case for the New York court; later his testimony that of his own knowledge he knew nothing of such arrangements, other than the checks which he made out, precluded the admissibility of this evidence, for Roat was palpably testifying in the first instance of something of which he had no knowledge.

Further, while Roat was on the stand, minutes of the meeting of June 9th, 1923, were offered in evidence and refused. Those minutes were prepared by a stenographer present at that meeting, and were furnished to Roat immediately they were transcribed, within two or three days. They bore evidence of the discussion over the expense of printing a book of the size required. A discussion of the fact that the $500 was for overhead only, and therefore other moneys would have to be furnished for progressing with the work. A resolution was passed to give me $500 a month, to be accounted for as expended, and when expended another $500 to be sent. When Roat testified that he did not know whether minutes were kept or not of that meeting, he was asked if he could produce minutes; he fenced, and then said he did not know who kept them.

But see the testimony as to whether he had seen one of the defendants take shorthand notes, where he had a lapse of memory and said—No, unless it was that day in the store —and then he stopped.

Roat is the man who, on recall, as a witness, apparently through lapse of memory, which was most keen on every other point, when asked to give the title of the proposed book I was to publish, answered "It would be too terrible to let it pass his lips;" hence you have here again, the admission that there was to be book, a book to be published. Was this characterization? Why was it admissible? Was this another contradiction of his own testimony that I, a disbarred lawyer, was to put this matter into the New York courts? The testimony was false for there was no title ever selected at that time, but there were twenty or thirty titles under consideration. Further, will you believe that the characterization of that title was staged for effect upon the jury? Why was he not compelled to state the title?

In view of this man's own contradictions, and the proof that he was willing to lie under oath, do you believe that there was any title too terrible to pass such lips?

Do you believe in the old adage that "a liar is worse than a thief?"

The City of Kingston ought to be so proud of this Mayor, that they should employ the most expensive artist in the world to reproduce his fair face and form, to be hung in their city hall of fame, as an everlasting monument to their fair city.

ROBERT JONES' government witness' testimony, to the same effect as Roat's, that my work was the preparation of a case for the New York courts, contradicted in his many letters, and more particularly in his letter to me of date July, 1923, in which he called one Kiethline a d—— liar, because Kiethline accused him of making the statement that the case was nearly ready for court, and his avowal therein that he had merely talked publication of pamphlet, and this months after the alleged famous meetings, at which they testified arrangements were made with me for the preparation of the case for the New York Courts.

JONES' testimony in regard to the time arrangements were made with me, contradicts the second statement of Roat, as to the arrangements being made by Thomas Grover in New York, for he says they were made with me in Roat's store in Kingston, in the Spring of 1923.

JONES' testimony that at this said meeting in the Spring of 1923 I was asked as to the amount of money required to put the case in the New York courts, contradicts that of Roat in this regard. Roat states that when asked I said $10,000; Jones states that it was $20,000.

JONES also contradicts the statements in the indictment that I organized the Wilkes-Barre National, and the District Attorney's opening statement that I organized this society.

SAMUEL BOOTH, of Lancaster, Pennsylvania, one of the National Committee, testified that he was present at these famous meetings of the Committee, at which Roat and Jones swear arrangements were made for me to prepare the case for the New York courts. Booth says no such arrangements were made; that he at no time understood I was preparing a case, but, on the contrary, my work was to prepare these pamphlets giving the result of my previous investigation of this matter.

THOMAS GROVER, of Wilkes-Barre, Pennsylvania, a witness for the defense, an attorney, in his testimony detailed herein, testifies that he was the man who made the arrangements with Gridley. Roat testifies that Grover was the attorney sent to make the arrangements with Gridley, as representing the Wilkes-Barre organization. Grover testified that the subject of preparing a case for court was never mentioned; but that the arrangements were for the publication of a pamphlet or book, out of which I was to receive fifteen per cent, and the Wilkes-Barre organization eighty-five per cent; that the $500 a month was for overhead, the different items going to make up the said amount being agreed upon, and included rent, light, telephone and stenographer's salary; that defendant Gridley was not being paid for this work.

Therefore, is this not sufficient to establish that the star witnesses used to support the first count in this indictment, swore falsely, as established by their own writings?

Is this not further established by the testimony of Booth and Grover?

Therefore, as to the arrangements made for Gridley's connection with the National, is it not established that those arrangements were for the publication of a pamphlet or book, a perfectly lawful and legitimate undertaking, to which no charge of fraud could be properly attached.

Even on the hypothesis of the false testimony, that I was to prepare this case for the New York courts, where, in the

king's English can you find that spells a "could and would" recover?

If this was the testimony given before the grand jury, I say, if it was, does this indictment falsely state the proofs submitted to that body? Who prepared that false indictment, as to that particular charge?

Was that particular charge inserted in the indictment because the law required a promise of some return, evidence or no evidence?

Were the words, "Could and would recover" manufactured deliberately to supply the legal requirements, lest the matter be thrown out?

What was the motive, what the propelling cause?

Who is there in this great country of ours who can use the public officers to maliciously assert false charges against another?

Was this done in ignorance? Can it be that?

Can it be that our government is employing men in these official capacities who have not sufficient understanding that:

To write a book, does not spell "Would recover,"

To hire an attorney, does not spell, "Would recover,"

To prepare a case for court, does not spell, "Would recover."

PRESENT ORGANIZATION.

Turning to the present organization, formed after my resignation and severance of all connection with the Wilkes-Barre National, which present organization undertook to supply the finances for the publication of the originally contemplated book of four hundred and eighty pages in three months, little will be said, for in the preceding pages will be found the reproduced facsimile copies of the questionnaire, the pledge, and advance book subscription, signed by the members of the interested organization, comprising about fifteen hundred members in Michigan alone, from which less than a score turncoat-members were used by the government to witness against me upon this trial.

These voluntary written statements, speak louder than anything I might say in my behalf.

The turncoat-members referred to, comprise the following:

Hannah Grow Lutz, 5857 Henry Boulevard, Philadelphia, Pa.
John C. Price, 5701 Loraine Street, Detroit, Mich.
John W. Page, 1238 Coplin Avenue, Detroit, Mich.
William Drew, Detroit, Mich.
John Tunnison, Rochester, Mich.
Iza Bellinger, 1016 Detroit, Flint, Mich.
Wm. J. Tomkins, 2031 Leland Avenue, Chicago, Ill.
C. D. Munger, 2921 Huron Avenue, Detroit, Mich.
Isabel Turner, c/o John C. Price.
Wm. G. Conine, 1275 25th, Milwaukee, Wis.
George Conine, 1045 25th, Milwaukee, Wis.
Jessie Blanchard, 1050 47th Street, Milwaukee, Wis.
Harold Van Wie, 10454 Jefferson Avenue W., Detroit, Mich.
Carroll Mather, Gratiot Street, Mt. Clemens, Mich.
Mary Burns, Detroit, Mich.
Ida Foster, Milwaukee, Wis.

Every witness named above, acknowledged under oath, signing the pledge, questionnaire and advance book subscription. In fact, all members upon joining, signed like papers for the purpose of satisfying the organization that they understood for what they were contributing money; the publication of a book by me, giving the results of my previous five years connection with the Bogardus matter; and that all mention of suits, settlements and the like would be forgotten until my work was finished.

These papers were dubbed self-serving by government officials upon the trial. No credit given for the honest motives, or for putting these people upon their notice that there was only one plan, the publication of a book.

If any promises were made to these people outside of that pledge, they were without knowledge on my part, and, therefore, I could not be charged with making those promises: I had a right to suppose that the pledge and questionnaire represented their understanding of the purposes and plans of their organization, and that I was perfectly safe in accepting their contribution to execute those plans.

Bear in mind these pledges were signed by these witnesses after my resignation from the National, and before they had seen me in connection with this organization work, notwithstanding Price's false testimony that I was in Michigan in May, 1924, a schooled lie, testified from a paper memorandum held in his hand, as a cure for the situation developing upon the trial, that these people, these government witnesses had all joined this organization and signed these pledges, after my resignation from the National, and before seeing me on February 2nd, 1925.

The first question on the questionnaire, stamps this charge in this indictment a deliberate manufacture—

> "Do you understand that the present work and plans of this organization are confined solely to the publication of a book by Mr. Gridley, at our request?"

and every one of the members, mentioned previously, answered either "I do" or "Yes."

Had they kept their pledge with me, had they raised the funds as promised, the book would have been published in 1924. Unfortunately, the finances were not forthcoming, and I submitted to their entreaties to wait for them; but this delay should not be charged to me, but to the circumstances.

I was away from New York, where all the records were kept for work on the book, at the behest of the organization,

From February 2nd, 1925 to February 9th, 1925;
From April 22nd, 1925, to October 26th, 1925;
From March 18th, 1926, to November 6th, 1926;
From April 21st, 1927, to the present time.

This left me about one year in New York, during all this period.

Immediately sentence was passed, and the preliminaries were attended to, I procured from New York all the materials and started work on this volume.

As to the public talks, to which reference was made by the government witnesses, i. e., at Lenape Park, Pennsylvania, Jackson and Flint, 1923, and thereafter at Chicago, and Milwaukee, and again at Lenape Park, after the present organization was formed, found in a preceding chapter of this book, I defy the world to find a word therein, which spells in the English language "a would recovery," or a lawsuit, or the making of any future plans until I was through with them, and my work was at an end.

Who schooled or trained these witnesses?

Will you believe in the face of these pledges, these questionnaires, these advance book subscriptions, in which they agree to forget suits and settlements, as a condition for my undertaking this work, these witnesses should be heard to say in one breath this, and in the next that I promised them the evidence upon which they could get this property; and this in the face of the fact that they sat in the same meet-

ings, and belonged to the same units that other members of the interested organization sat in and belonged to, who gathered nothing from those meetings or plans than a book publishing proposition?

JOHN C. PRICE, treasurer of the Detroit unit, a government witness upon the trial, now withholding about $750.00 of the Detroit society funds. From the following reproduced facsimile correspondence from one Norris, and his sister Mrs. Warren, you will see that this man, who is now claiming this was other than a book publishing organization, was, as early as November, 1924, returning to the contributing parties, and refusing to accept their money, because they had an understanding that they were going to participate in the recovery of an estate. And because they had such a false understanding of the plans and purposes of his organization he was calling them T. spies.

Following these Norris-Warren letters, and after he found it more to his own interest to lend himself to an endeavor to promote a new organization, from the membership he could gather from the interested organization, (upon promises that they would get their money in three months, and later that they were already to bring a suit, with the assistance of six lawyers, and two judges, who had given it as their opinion that a suit brought along the lines of a mock trial held in the City of New York on the fortieth floor of a certain building, would recover the property they were after), we find him receipting for membership in this organization to an old member of the interested organization, Mr. Will Caine. From Mr. Caine's letter you will see that he was told he had better send in his money for the case, before the chapter closes, or he would not get in on the money.

Here is a man who went before the grand jury, and claimed it was fraud for anyone to promise they could get the New York property, but who, in accepting this money, through the mails, for this Pacific Coast organization, which promises nothing but a suit, and has been promising it since 1896, was himself committing the crime with which he charged me.

It just does make a whale of a difference what particular organization does the collecting, does it not?

Take John W. Page and William Drew, President and Vice-President of the same society to which Price belonged, the Detroit unit, and now members of this new get-in-on-the-ground-floor organization, both government witnesses, both endeavoring to help the government support the charges in that indictment, and read the accompanying letters, written in January and April, 1926.

Now, take the trio, John W. Page, William Drew, and John C. Price, and note their signatures to the resolutions passed by the Detroit society, as early as December, 1924. Would you believe a witness, under oath, who would contradict such a paper, signed by him? Had I a right to rely upon the statements contained in those resolutions? Was it self-serving or was it strictly business, to force them to make such a statement or else quit them for my own protection? Are contracts self-serving, or are they drawn and executed to establish a mutual understanding? Something upon which each party can rely. Should this resolution be treated otherwise than a contract?

This resolution was passed by all the other units of the organization, for, at that time, because of conditions, I would have terminated my connection with this organization, as I did with the National; but by that resolution they declared "Gridley's work is solely and entirely that of publishing a book for the heirs, and at the heirs' request; that he had not solicited them to contribute to the publication of the book; that Gridley had insisted so long as he was connected with them in the work of publishing the said book, that they must forget suits and settlements, and not collect money for the purpose of, or under the promises of suit or settlement.

Of the government witnesses upon the trial who were members of the Detroit unit are—

John Tunnison, C. D. Munger, Isabel Turner, Harold Van-Wie, Carroll Mather, Mary Burns, and, of course, John C. Price, John W. Page and William Drew.

Here following is a general memorandum sent out by express October 9th, 1925, to all the units of the organization. See particularly, this paragraph:

"Further do not connect me with any part of this work except the publication of this book. After the book is published, we will let the future take care of itself. What you will do with this book after you purchase it, is your own business, and no one has a right to object. If you want to run to an attorney with it, that is your business, but don't connect me with it. If you organize a National body, to take charge of the affairs of this movement, after the publication of the book, that is your business."

The next reproduced facsimile copy, is a communication prepared and sent by express to E. S. Barrack, a witness for the defense, and Mrs. Jessie Blanchard, a witness for the government; President and Secretary, respectively, of the Milwaukee Society, immediately following a meeting held in Milwaukee, concerning which meeting Mrs. Blanchard testified, (and testified in the face of receiving this communication from me), that she gathered from this meeting, and from other meetings she attended, at which she heard me speak, that she was to get the evidence proving her right to this property.

This lady can talk faster than any lightning express, aye, talk longer and say less than anyone I have ever heard, but was more profuse in expressing her hopes, desires aspirations and expectations, though most reluctant to concede that she was expecting more than mortal man could deliver.

The speeches made at the different meetings she testified she had attended, are published in this book, and my reader will look in vain for the support of her charge; that she was to get the evidence from me which would recover this property.

I handled Mrs. Blanchard very carefully, because of some correspondence passed between her mother and the secretary of the organization, and the knowledge I had that her society was organized by W. J. Tomkins of Chicago, for I have never felt secure with Mr. Tomkins, since my first visit to Chicago, which quite warranted my apprehensions as to his attitude, although I was in no position to interfere, and was never in his presence alone.

Some stress was laid during the trial, upon the question of failure to furnish the organization with financial statements.

The fact is, in January, 1925, a summary statement had been rendered to all the units of the organization, although previously requested and voted to be discontinued. This was at the close of a strenuous effort to raise the funds for the publication of the book.

On February 2nd, 1925, the organization at Detroit, voted to enlarge the book, and passed resolutions to raise the money for the enlarged book by way of advance subscriptions in lieu of assessment.

The action at Detroit was followed by like resolutions at Philadelphia and elsewhere.

State officers were elected and arrangements made for the funds, received from the advance subscriptions, to be

held in the treasuries of the different units, until at least one thousand subscriptions had been sold; pending which matters and work on the book were held in abeyance.

Later, and on August 13th, 1925, at a state picnic held at Gull Lake, Michigan, a resolution was passed, a facsimile reproduced copy of which will be found in the following pages, giving me instructions with respect to financial reports.

Notwithstanding this resolution, however, when I returned to New York, October 26th, 1925, I proceeded at once to compile a full financial report as of November 1st, 1925, showing the receipt of twenty-eight thousand odd dollars, and the expenditure of twenty-six thousand odd dollars, with the expenditures classified, which report, with other previous like reports, showing expenditures of money for maps, books and research material, proved conclusively that this was nothing but a book publishing proposition. This was the extent of the proof adduced by the government as to the vast sums of money appropriated by the defendants.

These financial statements were sent to every member of the organization. Each unit received by express sufficient number to cover their membership. If, as is claimed by the government, there was nothing to this proposition but to furnish the evidence upon which they "could and would" recover this New York property, it would seem a vast piece of foolishness, when these people received these statements showing these expenditures, that they did not register disapproval, for verily anyone could see that the materials purchased were for nothing but a publication.

The fact is, that from its inception, the organization have met with considerable internal as well as external trouble, much due to the planting in the membership of deceitful or falsely-interested people.

It was not until the completion of the crusade, when it was apparent that the organization was sufficiently large to finance the publication of the enlarged book, that these falsely-interested members came out from under cover, and started on their work of destruction.

Charges sprang up in Detroit, fostered by the witnesses here used by the government, evidently for the purpose of swallowing up the finances of the organization, and preventing the publication of this book.

Entrapment!

Was this an entrapment?

What is entrapment?

Let me refer to the following statement by the court upon that subject:

In Billingsley vs. United States, 274 Fed. 89, the court said:

"Public policy forbids that officers, sworn to enforce laws, should seek to have them violated, and that those whose duty it is to detect criminals should create them. So that, when an officer induced a person, who had held no intention of committing a crime, to violate the law, courts will not lend their aid in punishing the person lured into crime."

This charge clearly states the law in relation to entrapment. U. S. v. Wight, (D. C.) 38 Fed. 109; Woo Wai v. U. S., 223 Fed. 412; Sam Yick et al. v. U. S., 240 Fed. 60; Grimm v. U. S., 156 U. S. 604-610; People v. Liphardt, 105 Mich. 84; Goode v. U. S., 159 U. S. 663-669.

Does it not seem strange that the two lady jurors, after five months of service, for the first time since serving as jurors, went out of their accustomed way for lunch to this hotel which the defendants and their friends had selected from the first day of the trial?

Had the defendants been followed on previous days to this hotel, at the lunch hour?

Were the officials cognizant of that fact?

Were these two jurors planted in this rest room, knowing that the ladies retired there before entering the dining room?

What about the man juror?

How was it that on the very first day he began to interest himself with the ladies attending the trial, approaching them, entering into conversation with them, parking himself in front of the hotel where the organization made their headquarters, and who now turns up to be a complaining witness, that some one was attempting to tamper with his honest judgment or decision in this case.

Were these jurors playing a dual role?

What significance can be placed upon the court's peculiar remarks, which were mystifying to the defendants and their counsel;

"If there is anyone in this room that has any complaints to make or anything to say about any of the jurors, they must say it now, or they will not be heard later," or that in substance.

Question

Did any official connected with my trial dine with any member of the jury during that trial?

I ask my government to investigate.

I ask my readers' aid in securing such investigation.

Future Performance

Did my contract with this organization call for the future publication of this book?

Was I expected to proceed with that work as fast as the finances provided would permit?

Was this a contract for future performance?

Does our government prosecute people who fail to keep their contracts, where the mails have been used?

In Durland vs. United States, 161 U. S. 311, the court said:

If there is one principle of common law which is absolutely settled by an overwhelming avalanche of authority, it is that fraud, either in the civil courts or in the criminal courts, must be the misrepresentation of an existing or past fact, and cannot consist of the mere intention to carry out a contract in the future.

* * * * * * * * * *

The significant fact is the intent and purpose. The question presented by this indictment to the jury was not, as counsel insists, whether the business scheme suggested in this plan was practical or not. If the testimony had shown that the defendants acted in good faith, believing that out of the moneys received they could buy investments or otherwise make enough to justify the promised returns, no conviction could be sustained, no matter how visionary may seem such scheme.

In Evans vs. United States, 153 U. S. 584, it was said by Mr. Justice Brown:

If a person buys goods on credit and in good faith, knowing that he is unable to pay for them at the time, but believing that he will be able to pay for them at the maturity of the bill, he is guilty of no offense, even if he be disappointed in making such payment.

Plate Seventy-nine

Cedar Rapids, Iowa.
October 7th, 1924.

Mr. W. D. Gridley.
Times Square Station.
P. O. Box. 71.
New York City.

Dear Mr. Gridley:

I hand you herewith copy of letter I have today written Mrs. Jennie Price, 2632 Cass Ave., Detroit, Mich. with which I enclose money order for $15.00 for the purpose indicated in this letter.

In her letter of Sept. 27th, to my Nephew Harry M. Norris 416-Breckenridge St., Buffalo, N.Y. Mrs. Price stated this remittance could be made either to her or to you, and in order that you may know what action I have taken as I assume you have some connection with the handling of the claims of the heirs I am sending you a copy of my letter of even date to Mrs. Price in which I have clearly outlined my position in the Norris Family.

As this is a matter in which I am vitally interested considering the enormous value of the estate I would be glad to have you write me giving all the information you can in regard to said estate and the present status of the settlement of same .

Yours very truly,

Mrs. Abbie Norris Warren
211 Park Court.

Plate Eighty

Cedar Rapids, Ia.
October 7th, 1924.

Mrs. Jennie Price.
2632 Cass Avenue,
Detroit, Mich.

Dear Cousin:

I received in today's mail from my Nephew, Harry M. Norris, 416 Breckenridge Street, Buffalo, N.Y. your letter to him of September 27th, and his reply without date in regard to the matter of "New York Estate" which your letter indicates belongs to certain heirs of the Norris family who, in order to benefit in the distribution of the estate must remit $15.60 to cover the expense of printing a certain book which as I understand it contains the names of all who have registered as claimants to this estate.

I recall about twenty years ago something came up about the Norris estate in NewYork City. My name is Abbie Norris Warren daughter of the late James F. Norris of Shelbina, Missouri, half sister of Walter S. Norris of 416 Breckenridge Street, Buffalo, N.Y. and Mrs. Addie Deyo of Waterloo, N.Y. and am Aunt to Harry M. Norris, 416-Breckenridge St, Buffalo, N.Y. and Miss Blanche Deyo, Daughther of Addie Deyo of Waterloo, N.Y. I know my Father had two Brothers, E. B. Norris of Mexico, Mo. and Chas. H. Norris of Cuthrie, Okla. uncles whom I knew well.

I desire to be in line for any settlement or division of this estate among the heirs and enclose herewith money order for $15.00 in your favor which please apply to that purpose sending me a receipt.

Will you please advise if you are the Daughter of either E. B. or Chas. H. Norris, if not, what was the name and residence of your Father. I wish you would also let me know just how this estate is being closed October 15th, 1924 also what is meant by "the Trinty people". Do we get a copy of the book which is to be published? We would be glad to have you write me fully giving all the information you can in regard to this Six Billion Dollar Estate as your letter to Harry M. Norris was the first knowledge I had that any such estate existed or that ~~the~~ a quest was being made for the heirs.

Your loving Cousin
Mrs Abbie Norris Warren
211 Park Court.

November 30th, 1934

Mrs Abbie Norris Warren at al,
311 Park Court,
Cedar Rapids, Iowa.

Dear Madam - and the rest.

Your letter of the 17th inst. like your letter of the 7th ult. forces me to again break my rule of not corresponding or interfering in any manner with the work of the heirs in performing their part of the contract -- financing the publication of the book. It is for this reason I did not acknowledge Mr. Norris' two letter from Buffalo, referred to by you in your letter of the17th inst., and, had you not enclosed in your letter to me of October 7th, a copy of your letter to Mrs. Price, I would not have replied to that letter.

From your letter to Mrs. Price of the 7th ult. I was unable to determine just what Mrs. Price had said to you; whether you were giving in that letter what she had written you, or whether you were deliberately making your own deductions from what she had written, intentionally or otherwise. It was for this reason I deemed it advisable to tell you plainly what my part of the work consisted of, and I directed that a pledge, such as is being used by the organization, be sent to you, to show you under what terms I was undertaking such work-- deeming that if Mrs. Price's correspondence with you had been in any way misjudged, it would enlighten you, and give you an opportunity to recall any money that you may have sent to Detroit. I have naturally assumed from the lapse of time that you either did not send in the money, or that you had recalled it, for Detroit remitted no money as having been contributed by you towards the financing of the book.

Now, taking that letter to Mrs. Price as a basis, the only think I can see is, that she indicated to your nephew Mr. Harry M. Norris of Buffalo that

> "In order to benefit in the distribution of the estate must remit $15.00 to cover the expense of printing a certain book."

This is the only statement which your letters claim Mrs. Price to have made, and they were made to your nephew Mr. H.M.Norris of Buffalo, It also seems to be the extent of your correspondence with Detroit, for you state that after receipt of an acknowledgment of your $15.00 Detroit shut up like a clam.

Now if you will look at the copy of your letter of October 7th, you will find that in the second paragraph you state;---

> "I recall about 30 years ago something coming up about the Norris estate in New York City."

Then look at the last paragraph of your same letter, and you will find that you have contradicted yourself, for you state ----

> "Do we get a copy of the book when published? We would be glad to have you write me fully, giving all the information you can in regard to this six million dollar estate, as your letter to Harry M.Norris was the first

Page #3, Mrs. A.N.W. et al

knowledgeI had that any such estate existed, or that a quest was being made for the heirs."

Now you will observe that in this same letter you state---

" I desire to be in line for any settlement or division of this estate among the heirs, and enclose herewith money order for $15.00 in your favor which please apply for that purpose."

Probably with these facts before you, you will be able to understand why I considered it important to answer your letter, and so explicitly explain my connection with this work, i. e., the publication of a book, and, not understanding the reason for these different statements, told you that it would be imporper for me to comment on other people's correspondence, at least without the original document in my possession. If you will refer to my letter to you of October 9th, you will alsofind that I told you that the "heirs must forget the question of suits and settlements until the book is published." I also told you that "no promises are to be made to anyone to raise money for the publication of this book. The money furnished must be per the pledge. The heirs assume the responsibility of raising the funds for the publication of this book." Now can you find anything plainer than those statements, and as you did not see fit to furnish me with a copy of the original correspondence which induced your letter to me, I am, therefore, at a loss to understand just what particular motive inspired your letter to me of the 17th inst.

In your letter of November 17th you state----

"I was solicited as a member of this organization, as I told you in my letter of October 7th by Jennie Price, 3632 Cass Street, Detroit, Michigan, introducing herself as a cousin of mine, and stating that the time was short to get into the fold and register plus $15.00."

Now if you will look at your letter of October 7th, you will find that you told me nothing ofthe kind, but in the copy of your letter to Mrs. Price you state that you received the information through Mr. Harry M. Norris of Buffalo. You do not make any mention of Mrs. Price soliciting you direct. This rather mystifies me - for you change your pace so very often.

Again, in this letter to Mrs. Price, you state that the $15. is to cover the expense of printing a certain book; that you hope to get a copy of the book. So you will acknowledge that there wasto be a book, and at that time you were sending a contribution of $15,00 towards the expense of publishing that book -- will you not, Now in your letter of November 17th you state the $15. was to join an organization. Now just what is the truth about the matter?

Bear in mind this, no matter what Mrs.Price has written and said, or anyone else, you certainly cannot by any process of reasoning fasten it on to me or make me responsible for it. Neither can you charge me with knowledge of it without furnishing me a copy of it to have that knowledge.

Now, as I understand this letter of November 17th, which you

Page #3, A.N.W.et al

must realize is written in the face of the fact that you then had my letter explicitly telling you that I was interested only in publishing a book; in the face of the fact that you were furnished with a copy of the pledge, giving you the terms under which I was undertaking the publishing of the book -- you are now demanding that I clarify the entire matter to your satisfaction before you decide on any further action in the way of protecting innocent people from being mulcted out of their good money. I clarified my position in my letter to you of October 9th.

Now who are you? I have not asked you for any money, and, according to your letters neither has anyone else. By what right do you threaten me through the mails, and accuse me of fraud, and trying to mulct people out of money? What request have you from me, what correspondence have you from me, which would warrant you to address me in this manner.

You have stated in your letter of November 17th that the source of your information advised you to put the matter into the hands of the First Assistant Postmaster General, but that you have hesitated in doing so until you were reasonably assured the matter was a fraud. Then there is some doubt in your mind as to that. In the first part of this paragraph of your letter of the 17th inst. you state that you have started a quiet little investigation yourself, but you quickly hook up to another human source of information who is advising you to take it up with the postal authorities. Upon what grounds? Did he give them, and if so, why didn't you state them, if you are so anxious to clarify the situation? No man on earth gave you that advice (if he had any sense) to threaten me through the mails, and accuse me of fraud, without you presented to him some foundation for such a charge -- what was it? In the absence of anything to the contrary, I can only conjecture that it is some letter Mrs. Pride may have written to this nephew of yours Mr. H. N. Norris - as it is the only thing connected with this of which I have no copy.

Allow me to say please that this part of your letter smacks more of one who is accustomed to preaching "Flee from the Wrath to come" than of protecting the innocent.

What I want to get at is the object? Is your letter written to me with the idea of intimidating me and the organization which has employed me to writethis book for them? Do you know of any law in under the sun which can accuse a man of fraud and mulcting people out of money in the face of the cold hard print that his connection with the matter is in the nature of publishing a book for an organization? If there any law in under the sun which could prevent anyone rendering a desertation or printing the decision in the very case you have mentioned in your letter of the 17th inst? If there is any such law I would be pleased to receive a brief thereon-- it vastly interests me.

Now you state in this letter that there are 1999 others who have fallen for this. Tell me where did you get the idea that there were 1999 others, and by what right you challenge the right of 1999 persons or any other number to publish a book in regard to this or any other matter, if they see fit to

Page #4, Mrs. A.N.W.et al

do so,and by what process of reasoning you can decide that if they finance such a publication they are being mulcted out of money. You do not claim, do you, that simply because the World Almanac or some newspapers publish something about this matter, it precludes anyone else from ever mentioning it? If you had any such foolish idea, you would be penalizing every historian of the day. That could not be your position,could it?

Now so far as my disbarment is concerned -- and this will answer two of your questions, for you have also asked if I am attorney for the organization -- I couldn't bem for the heirs know I am disbarred, and it was possibly this fact that caused them to come to me. But, you do not claim, do you, that because I am a disbarred attorney I am also disbarred from becoming an author, even in the most modest way? I might also add that I have received from the heirs themselves many reference to the article in the World Almanac, and clipping from the leading newwpapers in nearly every section of the country, so that they are also familiar with that, and I myself have repeatedly called their attention to the adjudicated cases. They are perfectly familiar with all those, but they have not swallowed all of it hook, line and sinker, and they still want their book published.

Therefore, the only point I can possibly gather from you letter is, that there is more alarm over the fact that the book will be published, than there is over the fact that certain people are going to spend their own money as they see fit, and, if I am not greatly mistaken, you never have been interested as a descendant of A.J.B.- also, if I am not greatly mistaken, both you and this supposed nephew Mr. Harry N. Morris, of Buffalo have put yourselves in touch with this movement for the purpose of hundering, if you can possibly do it, those who are desirous of having this book published. You must realize that many of these people, probably the same as yourself, are freeborn citizens of these United States, and enjoy the same rights and privileges as do you -- unless forsooth this prated stuff about this being a Government by the people and for the people is pure bunk - but, being a redblooded American - I pray to God not --- decidedly not.

Very truly yours.

Plate Eighty-two

DETROIT, MICH., November 22, 1924

Mr. Harry M. Norris,
416 Breckinridge St.,
Buffalo, N.Y.

Dear Sir:

Our Society refuses to accept you as a member, and I am returning to you, your contribution of Fifteen Dollars to the Book Fund.

Yours truly,

J. C. Price

DETROIT MICH., November 22, 1924

Mrs Abbie Noris Warren,
211 Park Court,
Cedar Rapids, Iowa.

Dear Madam:

Our Society refuses to accept you as a member, and I am returning to you, your contribution of Fifteen Dollars to the Book Fund.

Yours truly,

J. C. Price

Plate Eighty-three

John W. Page, *President.*

Wm Drew, *Vice President.*
Miss Arletta Gifford, *Treasurer.*

Mrs. Lura Kennelly, *Secretary.*
Mrs. H. E Hall, *Corresponding Secretary*

DETROIT BRANCH
- OF -
ORDER OF ADVOCATES OF JUSTICE
FOR THE DECENDENTS
- OF -
ANNEKE JANS BOGARDUS.

DETROIT, MICH., Nov 28 1924

My Dear Sir

Your letter of the 26th to hand & in reply will say that my wife answered Harris letter dated Nov 24/24 but only stated that she was satisfied with what knowledge she had and when the book was out it would give us the History and Mr Keidly was the author and that the heirs had not engaged any legal talent as yet and that he (Harris) was aware that Mr Keidly was the author of the book & not a lawyer as he was distressed some time ago his letter dated 11/26 was a reply to me which no further correspondence will be sent to him Mr his aunt from either of us

No I certainly did not send him any letter heads I trembled to his scheme and after that second letter of Mrs Warren he both spotted them and was very careful to what we said and I agree with you that letter signed Mrs Warren was a man writing and we both knew it was her Husband and he is in Dry Spring one of Lindy Specs after receiving Harris 2nd letter we thought he was not satisfied as he wrote him & gave the President name & address in Buffalo and told him to go the meeting & they could explain matters to him we also wrote Mrs Adgate & told her to call him up and invite him to her meeting & to explain the Book to him

DEC 1 - 1924

John W. Page, *President.*

Wm Drew, *Vice President.*
Miss Arletta Gifford, *Treasurer.*

Mrs. Lura Kennelly, *Secretary.*
Mrs. H. E Hall, *Corresponding Secretary.*

DETROIT BRANCH

- OF -

ORDER OF ADVOCATES OF JUSTICE

FOR THE DECENDENTS

- OF -

ANNEKE JANS BOGARDUS.

DETROIT, MICH., 192

and the same day as I returned him his money I wrote again to Mrs Adgate & told her that this May Morris money for the Bank had been return to him and for her not to give him any information what ever as we have placed him as another Lowly Egg and I am in receipt of a letter from Mrs Adgate stating that Morris called and she knew at once that he was no friend of the Estate & that she was glad we wrote her informing her of the facts

So I do not think there will be any further trouble in the matter judging from their replies I have not received any reply from Ceden Rapids for the Registered letter containing P.O. order of 15.00 but on receipt of same I will send it to your neither of us has ever been nor ever heard of these Cousins before this came about and I assume you that my wife will not recognized them as Relatives from this time on

DEC 1 - 1924

I am enclosing you two of the last letters of Morris So you can read them & when you get through with them (no hurry) why please return rollage

Yours &c J. C. Page

Detroit. Mich.
May 21. 1928

Dr E. A. Ernest
2681 E Jefferson Ave.
Detroit.

Dear Doctor
Mr Drew told me a few days ago that I had better send in my money for the case before the Chapter closes or I won't get in on the money as here goes. I am sending this because I can't come down cause we are short handed. When is the next Meeting.

Yours for the Cause
Wm E Caine
1300-15th St
Detroit

PEOPLES WAYNE COUNTY BANK 9-10
Baker-Twenty-Third Office

Detroit, Michigan May 21 1928 No.54056

Pay To The Order Of William E. Caine $15.00

Exactly FIFTEEN DOLLARS NO CENTS Exactly

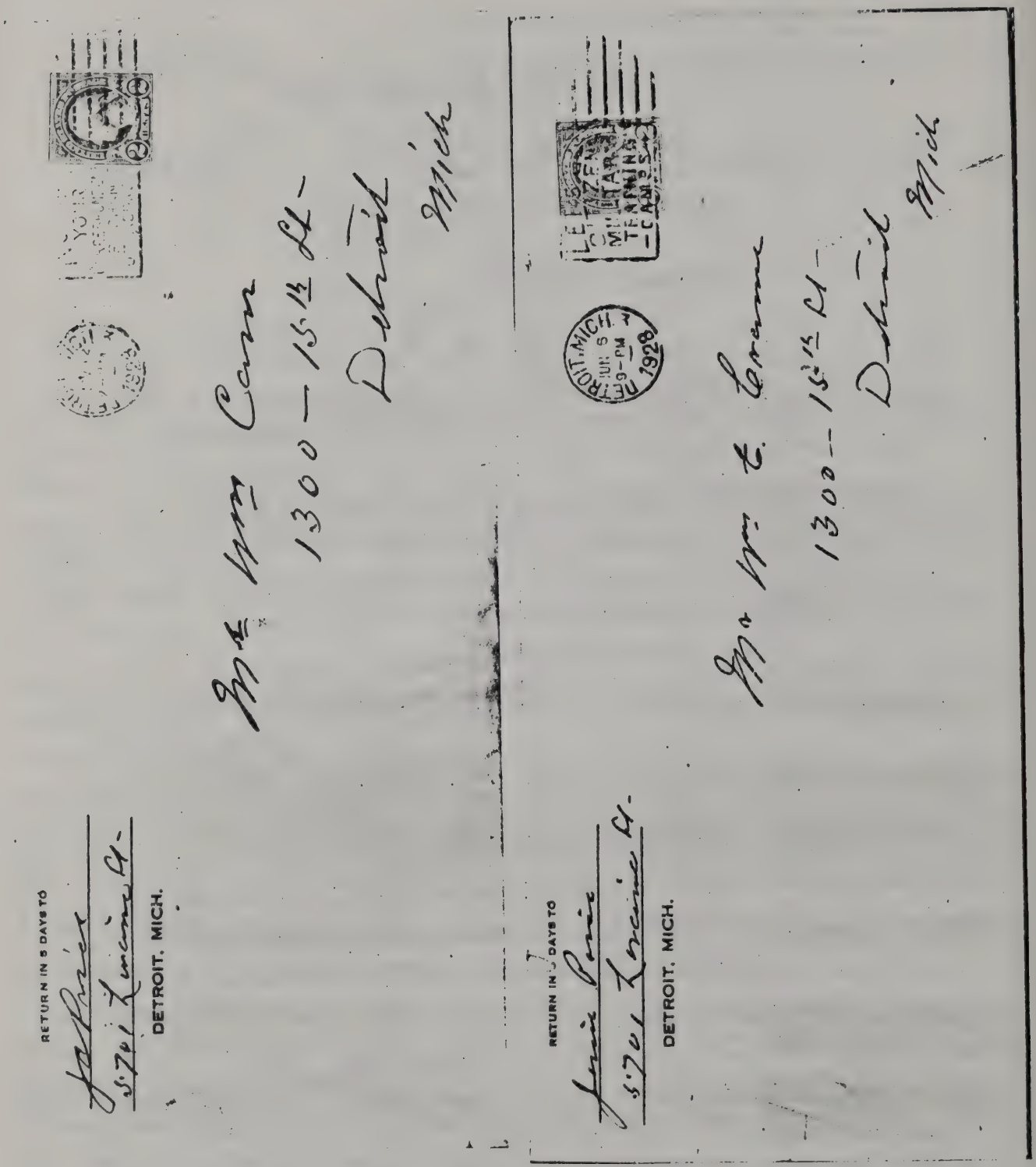
CASHIER'S CHECK

54

G. R. Kline
Manager.

POSTED AT LAFAYETTE & CASS(In front of Elk's Temple) at 10:06 P. M. May 21,1928.

Plate Eighty-five



TRINITY
BREAK YE MY COMMANDMENTS?

Resp - Ex 99
Feb 27/29
BHR

STATE GOVENER. E. A. ENNIST
PRESIDENT
G. A. SEYMOUR
VICE-PRESIDENT

MRS. ISABEL TURNER
SECRETARY
MRS JENNIE PRICE
TREASURER

Detroit Auxiliary
of
Anneke Jans Bogardus
Harlum, Trinity, Holland, Estates.
Detroit, Mich.

June 6/1928

Mrs W. E. Caine
1300 - 18th St.
Detroit

Dear Sir
Please find enclosed application. Kindly sign name & address & forward it back to my address enclosed
our next meeting will be held on June 11 at Dr Ennist at 7.30 P.M. Kindly arrange to be present our Secretary will forward Receipt for your Payment of 10.00

Yours Respectfully
Jennie Price
Treasurer

TRINITY
BREAK YE MY COMMANDMENTS?

Reg Ex 180
9/27/29
BKP

STATE GOVENER, E. M. ENNIST
PRESIDENT
G. A. SEYMOUR
VICE-PRESIDENT

MRS. ISABEL TURNER
SECRETARY
MRS. JENNIE PRICE
TREASURER

Detroit Auxiliary
of
Anneke Jans Bogardus
Harlum, Trinity, Holland, Estates.
Detroit, Mich.

Nov 12/1928

Mr Wm Cain
1300-15th St.
Detroit
Mich

Dear Sir

on June 11th this year you Paid into our Lovely Fifteen Dollars 15.00 1st half of your contribution for the Treasury sent you an Inductive Blank to sign & return & up to the Present time we have failed to receive same our next Meeting will be held at our residence 5701 Lorraine St: Corner of Hartley on Nov. 19 a week from to day very Important Business & Good Reason for the hours your Presence is requested be done & Come & Bring your application Blank

Yours &c
J Price
5701 Lorraine St.
City

10

Exhibit 52

Wm Drew, Vice President.
Mis[redacted], Treasurer.
Mr.J.C.Price

John W. Page, President.

Mrs Susie Brower
[redacted], Secretary.
[redacted] Alice G.Page

DETROIT BRANCH

- OF -

ORDER OF ADVOCATES OF JUSTICE

FOR THE DECENDENTS

- OF -

Page letter ANNEKE JANS BOGARDUS.

DETROIT, MICH., April 29, 1926

Mrs. Anna M. Conn,
Glen Loch, Pa.

Dear Friend & Heir:

Your welcome letter of April 20th. received. We were indeed pleased to know of your loyalty to the Gridley organization. It surely was very gratifying to know of the stand you are taking toward the dis-loyalty of Hannah G. Lutz. It does seem a shame that one who has done so much to help in this great work should fall down at this stage of the game and make so much trouble, tearing down all the good work she has helped to build up. I cannot begin to tell you the end of the trouble she is making with this propraganda of hers she is sending out. It does make so much un-called for letter writing for us who have worked so hard to tell the heirs that our names were used by her in this tearing down work without our consent.

I wrote "the lady" at once and told her where I stood and turned her proposition down flat and I am advising all the folks who write me about it to do the same; for it is entirely in opposition to all that we have planned and done up to this time, and spells failure for all who mix in with it. I was indeed glad to hear you speak so well of S.A. Booth, Mr.& Mrs. Brown and myself will always have a warm spot in our hearts for him and I know he is true blue.

We are very anxious to know how you came out with your plans for organization in New Jersey. Hope you had a successful meeting and organized a large society. Mr. Drew and myself have just returned home from the crusade trip and we had splendid results in organizing the heirs. There is now about fifty societys and we hope to see it sixty before the crusade is finished. Some of the other crusaders are not home yet. I surely hope you will succeed in your efforts to make Mrs. Lutz turn over the book money to its proper source.

I wonder what she thinks the heirs paid in their money for if it was not for printing the book, If all the heirs had done as she is doing our book never would be printed. We cannot expect a contractor to build us a house unless we furnish him the money to work with. Mr. C. is not a rich man and we certainly cannot expect him to give us all his time and furnish the money to print the book as well. I can't see where she is being so loyal. I certainly hope it will be possible for some of the crusaders to come to the East. 9over

Plate Eighty-eight-A

And now I must close with best wishes for a successful campaign.

I am yours for success.

John W Page

DETROIT, MICH., January 11 1926.

Mrs.G.L.Case,
522 E.Main St.,
Battle Creek,Mich.

Dear President:

A letter from Mr.Gridley this morning states that only three societies have sent in the ''Advance Subscription Money''.Now if this means your society has not done so,will you please see to it that this money is sent in at once. He is very anxious to start the set-up work on the book and must have the money to do it.

Mr.G.cannot understand this unneccessary delay as the heirs are only holding up the work on the book. This money should have been in the N.Y.office by the first of the year.Send it in. Don't let's hold up the work any longer.

As requested by Mr.Gridley there will be no State meeting called at the regular time.

Yours respectfully.

John W Page Mrs Drew

R_E_S_O_L_U_T_I_O_N.

WHEREAS, every member of this society knows full well that Mr. Gridley is a disbarred attorney, and that from the first he has told us that we must not refer to him as our attorney or legal adviser; but that if we must refer to him we do so as our representative or adiver; and

WHEREAS, Mr. Gridley has insisted from the first that each and everyone contributing to the funds for the publication of the book shall sign pledges in order to protect him, in case the Post Office Department require him to show for what purpose money is coming through the mails, and in order that he will be in a position to back up the receipt of every dollar sent him, and

WHEREAS, Mr. Gridley from the first, and throughout this whole matter, has insisted that we must forget suits and settlements, and not collect money for the purpose of or under the promise of suits or settlements, pending the publication of this book, which book it is understood each society may present to an attorney of their own selection, and

WHEREAS, it is perfectly understood by all of us that the money being raised, which has been raised, and which might be raised is for the purpose of financing the overhead and expenses incident to the publication of the book and the procurement of records, etc.; and

WHEREAS; it has recently come to Mr. Gridley's attention that his wishes are not being carried out-

NOW, THEREFORE, be it

RESOLVED: By the Detroit society, that Mr. Gridley be informed that the members of this society understand now, and have understood from the first that he is a disbarred attorney, and cannot act as our attorney, or as legal advisor of the organization; that we also understand that he has not attempted to act as such attorney, and that we must not mention him, by letter or otherwise, as such attorney; And be it further

RESOLVED: that the members of the Detroit society having understood from the first that each member should sign a pledge to furnish to Mr. Gridley for his protection, that the secretary of this society is directed to ascertain from each member whether or not they have signed such pledge, indicating for what use the money contributed by them was to be used, and those who have not signed such pledge, shall be requested so to do at once, and said pledge shall be furnished to Mr. Gridley, said member being privileged to make such changes in said pledge as they may desire; And be it further

RESOLVED, that the members of the Detroit society have understood that Mr. Gridley's work is solely and entirely that of publishing a book for the heirs, and at the heirs' request, on the condition that they finance it, and that the members of the Detroit society will gladly go on record as stating that he has not solicited them to contribute to the publication of this book, and has left the matter of raising the funds for the publication of the book entirely in the hands of the heirs themselves; and be it further

RESOLVED, that a copy of this RESOLUTION be furnished to each and every society in the organization with a request that they pass like resolutions and send them in to Mr. Gridley, executed by the secretary.

John W Page Pres
Bessie E Browey Sec
J. G. Price Treasurer
Mrs Drew Vice Pres

October 9th, 1925 Exp

NEW MEMBERSHIP BLANK which must be signed by all new members paying membership fees for book fund. For these reasons:

A recent letter forwarded here, indicates that one society claims to have been supposing that my work was the preparation and arranging of papers to be submitted to attorneys to be presented in court -- or substantially this.

Any such supposition is a mighty dangerous supposition, and as much so for you, the heads of the societies, as for me.

It is unbelievable that any man twenty five years of age living in the United States of America, does not know that the preparation of papers to be submitted to court is the office, the particular office work, which an attorney alone can do.

Now the party who wrote this letter has known for a long time that I am a disbarred attorney, and have no right to be drawing or preparing legal papers to be submitted to court, and if I should do so, I would be subject to prosecution.

If you collect money, making any such statement, you will be chargeable with having obtained money by fraud, for which you can be prosecuted.

The author of this letter signed the pledge, and you all have signed the pledge, which denies him the right to now claim that he was working under any such supposition, and this man's letters to me up to within a few months past, gave no indication of his not understanding that I was collecting and preparing the proofs for this book, to be sold to yourselves and the public, and that my work ceased there, after which you would organize your new National Body to take charge of your matters, and which body would receive from me eighty five percent from the proceeds of the sale of the book.

Now to protect you against any schemes by which spies will offer to join your society, with a view of afterwards claiming they paid their money for a different purpose than the publication of the book, you had better, hereafter, and without exception, require every new member to sign this new form of membership blank, after reading it, so that their mouths will be closed, and you will be fortified with proof to establish that you accepted their money for a lawful, legitimate and just purpose.

Further, do not connect me with any part of this work except the publication of this book. After the book is published, we will let the future take care of itself. What you will do with this book after you purchase it, is your own business, and no one has a right to object. If you want to run to an attorney with it, that is your business, but dont connect me with it. If you organize a National Body, to take charge of the affairs of this movement, after the publication of the book, that is your business.

On forms enclosed write first the name and number of your society, as well as in the body of the form-- or use a rubber stamp. The form will serve for temporary purposes.

When membership fee was increased to $25.00 you automatically did away with the old form. More forms on request.

Plate Ninety-one

Hotel Nicollet,
Minneapolis.
July 22nd, 1926.

TO OFFICERS OF MILWAUKEE SOCIETY,

Will you oblige by sending me a list of the names and addresses of those who attended your meeting on the 19th inst ,

I will be at the above named hotel until Monday at 11 A.M. at which time I will leave for Aberdeen. Therefore if you can possibly get this list in the mail, it should reach me early Monday morning.

Put a returnaddress on the envelope.

I cannot allow the matter raised by your secretary's question at the meeting to pass without going on record and insisting that you make it plain to all members and prospective members, that the sole and only purpose and object to be attained by this organization is the publication of a book, and that they must forget suit and settlement, and all or any discussion as to what they are going to do with the book after it becomes their property for my protection. They must allow the future to take care of itself. The great question for the Bogardus familyto solve now is, Can the family be organized to finance this book. The object of the book is to give them knowledge. To give the public knowledge of their side of this matter. To down adverse public opinion. To create a fund from the sale of the book to be turned over to their proposed National. That what their National does with this fund must be left to the future. That every society will be privileged to be represented in the National, and every State's representation will depend upon the effort made in that State to establish societies everywhere; in oter words the number of votes to be cast by any State, will be determined by the number of societies in that State.

I must insist that you refuse to accept any members or any money from any prospective members who are not satisfied with the above plan of your organization.

Everyone must realize that a good, able, conscientious attorney will not give an opinionin regard to any matter which you take to him, without a full knowledge of all the facts, without all the records.

That the selfsame attorney, should he give you a favorable opinion, even if the question involved the collection of a promissory note, would not guarantee that you would get your money as the result of any suit. Therefore anyone who endeavors to exact promises as a condition to becoming members, at variance with the accepted standards of business, should be refused membership, and told that their money is not wanted. Invariably you will find those who want to raise these questions have an ulterior purpose, and they are better out than in your organization. You do not need them. If they are really interested descendants tell them to go and find an attorney who will do the business for them their way.

Very trulyyours.

To Mr E S Barnack
218 E 15th St Milwaukee
Mrs Jessie Blanchard
272 - 51st Ave

R-E-S-O-L-U-T-I-O-N-S

WHEREAS, Philadelphi Society, with a list of 51 members, reported to be active, have made a demand upon Mr. Gridley for a statement, and also passed resolutions in regard thereto, sending a copy of the same to the Michigan societies and elsewhere, demanding that said report or financial statement shall be a complete and itemized list of expenses from August 1, 1924 to August 1, 1925, together with the number of members in each society, and number of books each society has sold; and

WHEREAS, it is considered that the following statements in said co; resolution are rather in the nature of casting aspersions on Mr. Gridl that "such a statement will save many members to the cause, and abolish all propaganda being spread about and will certify his honest endeavor for the same"; and

WHEREAS, prior to August 1st, 1924, (the drawing power of the monthly statements having been tried out from January 1st, 1924 to August 1st, 1924, the Michigan leaders of the organization requested a discontinuance of the monthly statements, claiming they were a hindrance instead os a benefit to the work; and

WHEREAS, on August 1st, 1924, when the last monthly statement was sent out, all members were notified, in substance, that the statements would be discontinued by request of the majority, and the reasons for such discontinuance were given, to which discontinuance acquiescence has been given for nearly a year; and

WHEREAS, after the drive had begun, and in order to counteract the impression that it was not producing results, a summary statement was issued after the close of the drive, covering the moneys which had been received up to that time, and also the expenditures; and

WHEREAS, since said time the moneys collected from the advance subscriptions for the book have been substantially held by the societies, and ver little money has been sent to New York in the way of what we term "membership fees to go to the book fund" - to illustrate, Philadelphia Society has sent in since January summary statement, according to its own report, some $140.00; and

WHEREAS, on July 16th, prior to Philadelphia demanding such a statement, the societies of the organization had received notices of a contemplated statement to be issued as of August 1st, to each of the members of the organization, which notice, by reason of the language of the demand by the President of the Philadelphia Society has been withdrawn-

NOW, THEREFORE, WE, the societies represented at a State Picnic, held at Gull Lake, Michigan, August 13th, 1925, after discussion of the correspondence from Philadelphia, have unanimously

RESOLVED; That we disapprove of the course taken by Philadelphia in making any demand at this time, knowing as they must know, that the moneys sent in since the last statement of January are trivial in amount and wholly unwarrant the expenditures of some thirty odd dollars for postage, and also wholly unwarrant the necessary time and labor which would have to be expended on getting out a statement such as is described in her resolutions; and be it further

RESOLVED: That the question of rendering financial statements and the kind of statements to be rendered be left entirely to Mr. Gridley to determine under the circumstances and that this authority is hereby delegated to him on behalf of the Michigan and other societies here assembled and represented, until the organization of the National Committee; and be it further

RESOLVED: That all the members present at the passing of these resolutions give a rising vote in demonstration of their unbounded faith and confidence in our leader, Mr. Willis T. Gridley, and they go on record of heartily disapproving of this action on the part of the Philadelphi Society, when it is palpable from the records shown that Philadelphia has retarded instead of going forward in their organization work, and that they have only contributed some $140.00 since January 1925, and have not increased their membership in any particular for some time; and it is further

RESOLVED: That the secretary of this meeting be requested to have copies of this resolution sent to each and every society in the organization and to every individual member of the Philadelphia Society.

(Signed) Frank L. Rose
Acting Secretary.

Retrospection!

Reading the plea in abatement, and the annexed affidavits, interest must perforce center, first, I am sure, around the affidavits of the three people who as long ago as July, 1927, interviewed Gregory H. Frederick, the assistant United States district attorney, Blee S. Hatt, Mrs. Lettie B. Kist, and Charles Cation; all verified July 27th, 1927.

Hence, before any investigation was started before a Grand Jury, and while one Walter, a post office inspector, was interviewing hundreds of members of the organization, observe the hatred, hostility, the prejudicial attitude of this government employee, as evidenced by these affidavits.

"What was Gridley? A crook! In fact Gridley was everything but a gentleman. A grafter! And what not! Book? Who'd be interested in your book? You'd be paying your own dividends if you did print it! We are out to get Gridley, and we will get Gridley!"

His attention was called to the fact that nothing had been promised but a book, but that was unbelievable. Gridley must have promised something else. Why?

His attention was then called to certain people, whom these three affiants knew were being used in Detroit, and they told Frederick that these people had an organization and were taking in members under promise of getting them their money in three months. Was not that a fraud? The answer was, "Oh, well, if that is being done, we will get them!" Did they, or did they use those very people against me upon the trial, and are they still at large, and still collecting money through the mails, under promise of a suit?

This public official is sworn to certain duties, and part of those duties is not to manufacture criminals but to protect citizens. To prosecute, not persecute. To be fair and impartial in all his dealings, not hostile and prejudicial.

Are you going to say that this man, consumed as he was with all this spleen, venom, hatred, hostility, and prejudice, could go into the Grand Jury room, with this matter under investigation, without carrying into and creating that atmosphere?

Can you anywhere find a more despicable display of venom than his attitude towards Mrs. Matthews and Mrs. Brower, two estimable ladies, who, unafraid, with a firm belief in the protection afforded witnesses under our laws, so long as they tell the truth, and nothing but the truth, went into the Grand Jury room, only to be treated by the assistant district attorney worse than he would treat the vilest criminals. I have said worse, because it is a fact that no redblooded man, whether criminal or not, would stand for this treatment in a Grand Jury room. This treatment of these ladies was cowardly. It was taking advantage of their inexperience with Grand Jury proceedings. It was taking advantage of their lack of knowledge that a district attorney cannot tell witnesses to "shut up" or that they are "liars," or take them from a Grand Jury room under a charge of perjury; that the law says he shall interrogate witnesses, not bully or intimidate them, or frighten them; that when requested he may expound the law, but he cannot demand an indictment; that the law knows no apparently interested or hostile witnesses in Grand Jury proceedings.

Mark well, how, when Mrs. Matthews asked to read a certain paper regarding her organization, the district attorney told her it was a bunch of lies! He asked her who wrote it, as it was in typwriting. She hesitated, because of his treatment of her and the general evidence of hostility towards the defendants. Then she did say it was Mrs. Wright, the organization secretary, had written the paper at her dictation. What was the answer? What was his duty?

Frederick said to her, "I thought so—why did you tell a lie about it?" Her answer was that she had not lied.

Mrs. Brower's affidavit is supported by the affidavits of Mrs. Matthews, and the score or more members of the organization standing outside of the Grand Jury room.

Is any sensible person going to claim that when Mrs. Brower came from that Grand Jury room with Walter, the post office inspector, holding her arm, screaming, "Lizzie they say I lied, and I did not lie, I told the truth! They are taking me for perjury!" Is any person going to say that all was proper and regular within that Grand Jury room while she was testifying? Were those grand jurors doing their duty? Were they investigating those charges?

The answer is contained in the affidavits of the majority of those grand jurors, filed by the government, containing this statement: "Were not treated any different from what apparently interested and hostile witnesses have been treated in open court." Is this the truth? If so, why did I get six months for calling a man a liar in open court?

I say to my readers, if this is true, if that is the way citizens are treated in open court in that district, it is high time some one took up the cudgels to protect those who are sworn to tell the truth, the whole truth, and who are entitled to be allowed to tell the truth, whether it offends the government or not. It is high time that this distinction between hostile and friendly witnesses before Grand Juries be eradicated.

Is this freedom? Is this equality? Is this justice for rich and poor alike? If a citizen is denied this then have our forefathers sacrificed in vain for this government of, for and by the people?

With these conditions surrounding the obtaining of that indictment, with the selfsame hostile conditions surrounding the motion to quash and the plea in abatement, with these affidavits presented to the court, calling attention to the unseemly conduct of the assistant district attorney before the Grand Jury, with the evidence before the court of this district attorney calling witnesses "liars" and telling them to "shut up," and removing such witnesses from the Grand Jury room under charges of perjury, has this district attorney been charged with contempt of court? Was he even reprimanded for his conduct? Most assuredly not.

But on the second day of the trial, with the very air charged with hostility and prejudice, smarting under the obtaining of that illegal indictment and disregard of my constitutional rights, a government witness on the stand lying and contradicting himself within a space of six questions, I sprang up, shook my fist at him, and called him a d—— liar. I was hustled to the court's chambers where I tried to tell the court the strain I was laboring under and that I had no intention of offending. With what result?

Just four months later I was called in on contempt charges. I was told that I had attacked the grand jury, the district attorney and the traverse jury, in fact about the only thing I was not accused of attacking were the inanimate objects; that I had done all this for the purpose of getting a mistrial.

I was sentenced to six months in the House of Correction, and with that sentence I was handed the kindly statement that the court could not sleep unless the limit was given; that his conscience would not let him rest.

Mind you, before that court, at that very minute, stood the man who, in violation of his oath of office, with no extenuating circumstances, with no bitter memories of a persecution weighing him down, called ladies liars and told

them to shut up before a Grand Jury. He passed from that court room without even a reprimand. A free man.

Proceedings before Grand Juries are, constructively, in the presence of the court itself; witnesses refusing to answer questions are summarily taken before the court on contempt charges.

Why was this offense when committed by me so heinous as to justify six months' imprisonment sentence, when a law officer, guilty of the same offense, when constructively before the same court, could go free, and the matter even go unnoticed.

This is equal justice!

Was this a true bill?

Was this an illegal indictment?

Were my constitutional rights invaded?

When within four days after the filing of this indictment, and before arraignment, I charged that the sister-in-law of the Pontiac Postmaster, who resided with him, was a disqualified juror, what was the court's sworn duty?

Upon the opening of this trial we find the record discloses these remarks by the court:

"I don't know whether the jurors have been questioned at the beginning of the term or not, but I always ask all jurors at the beginning of the term the question as to whether their names are on the tax roll, because that is necessary in order to have a lawful jury. Is your name on the tax roll?"

With this statement before you, did he administer justice as by his oath he is sworn to do, when it was called to his attention that this juror was disqualified because her name had not been on the tax roll for ten years?

Why, under these circumstances, did the court remark, "They shall not escape on any such ground."

Escape from what? From this illegal indictment?

That indictment was the only matter before him.

Will you believe this is a proper remark, a justifiable position to take?

Despite the voluntary appearance of the defendants a $10,000 bail was demanded of each, a sum far in excess of that imposed upon second and third offenders, a sum which, ordinarily would mean habitation behind the bars.

Was this excessive?

On this question the court said:

"I fix a substantial bond in every case. If I were to try to look into the reputation of each individual and fix a high bond only in those cases where I thought ill of the defendants, why I would do harm to those defendants where I fixed it high. The fact is that those defendants who are likely to run away are the ones who can most easily furnish bond. I will fix the bond at $10,000 for each defendant, two sureties."

Was this unusual?

The Supreme Court of the United States has said that the constitution is as much intended to protect a man from illegal prosecution as it is to insure him a fair trial.

Was this court bound to uphold the law as laid down by the highest court in the land?

Had I a right to expect protection from this court?

Was it afforded me?

Was the law respecting the secrecy of the Grand Jury proceedings violated?

Can there be any question as to Walter's presence in the Grand Jury room on the occasion referred to in the affidavits? If so, had he been accustomed to standing over his witnesses on prior occasions?

Why was it necessary?

With the government represented before that Grand Jury by counsel, knowing his sworn duty, why was it permitted?

When this matter was brought to the court's attention, why was it overlooked? Why was a full investigation sidetracked?

Was it because they knew the indictment had been forced through, and knew the dangers of an attempt to re-indict?

Were my rights under the constitution invaded by this transgression?

Have I been subjected to nationwide press humiliation through the machinations of this public official?

Oh justice, what crimes are committed in thy name!

Have we come to a point in our national life where the judicial branch of our government can be used as a bludgeon at the dictates of influential or moneyed interests?

Has it become alarming?

Let me call your attention to the admonitions and the forewarnings of some of the leading men of our day:

The following excerpts are taken from "The Judicial Oligarchy" by Gilbert E. Roe:

Courts should have no more to fear from honest criticism than do the Congress and the President. Judges are public servants. Their acts are public acts. In a self-governing nation, neither courts nor their decisions can properly remain above and beyond the control of the sovereign citizens. Judges cannot perform their high function in the public interest unless they are made acquainted with public needs and are responsive to the public will.

The judiciary has grown to be the most powerful institution in our government. It, more than any other, may advance or retard human progress. Evidence abounds that, as constituted today, **the courts pervert justice** almost as often as they administer it. Precedent and procedure have combined to make one law for the rich and another for the poor. The regard of the courts for fossilized precedent, their absorption in technicalities, their detachment from the vital, living facts of the present day, their constant thinking on the side of the rich and powerful and privileged classes have brought our courts into conflict with the democratic spirit and purposes of this generation. Moreover, by usurping the power to declare laws unconstitutional and by presuming to read their own views into statutes without regard to the plain intention of the legislators, they have become in reality the supreme law-making and law-giving institution of our government. They have taken to themselves a power it was never intended they should exercise; a power greater than that entrusted to the courts of any other enlightened nation. And because this tremendous power has been so generally exercised on the side of the wealthy and powerful few, the courts have become at last the strongest bulwark of special privilege. They have come to constitute what may indeed be termed a "judicial oligarchy."

Sensing this, the people have become distrustful. In various ways they have shown their dissatisfaction with the work of the courts. Severe attacks have been made recently upon the integrity and ability of certain judges. Everywhere there is a growing public demand for a change that will bring the judiciary again into its proper sphere and into closer communion with the progressive ideals of this generation.

It must be expected that the conflict with the courts will be a hard one, for the judiciary is undoubtedly looked upon as the last and final bulwark of Special Privilege. If the judges will retrace their steps and for the future exercise only constitutional powers, it is probable that their juris-

diction will long be left unquestioned. If they will never declare a statute unconstitutional unless it is so plainly so that any person of intelligence, whether a lawyer or not, can see it, they will find that all the people are willing that the Constitution shall be placed above any statute. It should not take a lawyer to determine in a given case whether two plainly written provisions of law—one a constitution, the other a statute—conflict or not, and if the question of whether there is a conflict is so doubtful that judges divide almost equally upon it, the people have a right to believe that it is not the Constitution, but the preconceived notions of the judges with which the statute conflicts.

If the courts will interpret statutes according to the intention of the law-making branch of the government, without reference to their own economic or social theories, and fully recognize the right of the people within plain constitutional limits, to make such laws as they please, another great cause of popular discontent will be removed. But if the courts as now constituted, will not do these things voluntarily, then they will be reconstructed and forced to do them. The recall and also the popular election of all judges for short terms seem at this time measures likely to be adopted in an effort to force the courts back into their original constitutional position where they will serve the interests and protect the rights of the whole people.

President Taft, in a speech delivered in Chicago on September 16, 1909, and reported in the public press of that city said:

"Of all the questions that are before the American people, I regard no one as more important than this; to-wit: The improvement of the administration of justice. We must make it so that the poor man will have as nearly as possible an equal opportunity in litigating as the rich man; and under present conditions, ashamed as we may be of it, this is not the fact."

Delos F. Wilcox, Ph. D., in "The Independent" of October 22, 1908, said:

"As a matter of fact it is not Bryan or Roosevelt or Lincoln Steffens or Charles Edward Russell that is the revolutionist; these men talk; the Supreme Court of the United States acts. . . . Who are these judges who may not be criticized by the humble citizens from whom in theory all the powers of government, judicial as well as legislative and executive, emanate? In the first place they are lawyers, though not always good ones. . . . . The truth is that all kinds of men occupy the bench, among them men who secured their positions through all the different degrees of political chicanery practiced in American politics. Judges appointed for life, having no fear of the power of the people or of the executive to rebuke them, are likely to interpret the law according to their own interests and sympathies, whatever they may be."

Starting from the same point—The Constitution of the United States—the people and the federal courts have been traveling in opposite directions for more than a hundred years. The State courts at first with some hesitation, have in the main followed the lead of the federal courts. While the people have been remaking the Constitution so as to obtain more complete and immediate control of their government, the courts have been remaking the Constitution so as to escape more completely from popular control. While the people have been laying the foundation for democracy, the courts have been building an oligarchy.

John Marshall, before he became chief justice, declared before the Supreme Court of the United States:

"The legislative authority of any Country can only be restrained by its own municipal Constitution; this is a principle that springs from the very nature of society, and the judicial authority can have no right to question the validity of a law unless such a jurisdiction is expressly given by the Constitution." [12]

In 1911 occurred the first, and up to the present writing, the only attempt to recall a judge. The attempt grew out of the trial of the case of the State v. McClallan, which occurred in Rosenburg, Oregon, in May, 1911. The facts are sufficiently set forth in the recall petition, which was in part as follows:

"We, the undersigned citizens and legal voters of the State of Oregon, and of the Second Judicial District (consisting of the counties of Douglas, Lane, Coos, Curry, Benton and Lincoln), respectfully demand the recall of Circuit Judge John S. Coke of said Second Judicial District; and each for himself says: I have personally signed the petition; I am a legal voter of the State of Oregon and of the Second Judicial District thereof; my residence and post office are correctly written after my name."

On the 20th of July last, an incident occurred in the Federal District Court in New York City which was widely commented upon by the press of the country as tending to prove that there was one law for the rich man and another for the poor one in the Federal Courts. It so happened that at the time in question, two men were sentenced for the crime of smuggling. Both sentences were imposed on pleas of guilty. One was a poor man, far gone with consumption, whose frauds on the government had been trifling. The other was a rich man, a member of a very large importing firm whose frauds on the government had run well over the million mark, and whose goods were sold to the fashionable trade throughout the country. The former received a prison sentence; the latter was merely fined twenty-five thousand dollars. I quote from one of the numerous editorials on this subject.[13]

"On July 20th, while he (the Federal Judge) sat in the United States District Court in New York, two men were brought up for sentence for smuggling. One was a comparatively small offender. He pleaded guilty to frauds on the Government in the weighing of importations of figs and cheese. The other was one of a syndicate of smugglers whose known and proved smuggling amounted to $1,400,000 worth of gowns and millinery goods. The little smuggler was sentenced to three months in prison. The big smuggler was discharged with a fine, $25,000, a fraction of what he had swindled from the government. The United States District Attorney protested: 'I would rather see the defendant get one day in jail than be let off with a million-dollar fine. He visited my office and crawled on his knees and tried to kiss my hand in his efforts to get me to consent to a fine.' In addition to being a leader of a gang of rich smugglers, this defendant was a bail jumper."

The editorial, after referring to some further statements of the District Attorney to the effect that the defendant had tried in various way to reach him, concluded:

"We do not insist on the law's pound of flesh. We have no notion that the law should be vindictive. But on the same day that this million-dollar thief was set free on repayment of part of his stealings the same judge sent a poor little consumptive Greek to jail for frauds trifling in comparison."

In the same editorial, it is said:

"Once let the people be thoroughly convinced that their courts are not impartial, that there is one law for the rich and another for the poor and the seeds of revolution will have been sowed."

[12] Ware v. Hylton, 3 Dallas, 211
[13] Philadelphia North American, Aug. 1, 1911.

As a matter of fact, while the dramatic features attending the imposing of the above-mentioned sentences caused the affair to be generally commented upon in the press of the country, there was nothing unusual about it. The judge who imposed the sentences was quite within his right, and was well fortified by precedent for what he did. Fines for the rich law breaker and prison for the poor one is the general rule.

The distinction that was made by the New York Court in the afore-mentioned cases is being made every day in the year by the courts throughout the country.

But money as a political influence is essentially corrupt; it is one of the most dangerous to free institutions; **by far the most dangerous to the free and just administration of the law.** It is entitled to fear, if not to respect: the question will arise, and arise in your day, though perhaps not fully in mine: Which shall rule—wealth or men; which shall lead—money or intellect; who shall fill public stations —educated and patriotic free men, or the feudal serfs of corporate capital?"

I refer to Judge Seymour D. Thompson. In his address to the State Bar Association of Texas, in 1896, Judge Thompson reviewed the cases decided up to that time, showing the tendency of the courts to override and control the other departments of government and to protect property rights at the expense of human rights, and concluded his address as follows:(American Law Review, Vol. XXX, pp. 697-9.)

"The dangerous tendencies and extravagant pretensions of the courts which I have pointed out ought not to be minimized, but ought to be resisted. Their resistance ought not to take the place as advised by Jefferson, by 'meeting the invaders foot to foot,' but it ought to take place under the wise and moderate guidance of the legal profession, but the danger is that the people do not always so act. In popular governments, evils are often borne with stolid patience until a culminating point is reached, when the people burst into sudden frenzy and redress their grievances by violent and extreme measures, and even tear down the fabric of government itself. There is danger, real danger, that the people will see at one sweeping glance that all the powers of their government, Federal and State, lie at the feet of us lawyers; that is to say, at the feet of a judicial oligarchy; that those powers are being steadily exercised in behalf of the wealthy and powerful classes, and that the power thus seized includes the power of amending the Constitution; the power of superintending the action, not merely of Congress, but also of the State Legislatures; the power of degrading the powers of the two houses of Congress, in making those investigations which they may deem accessory to wise legislation, to the powers which an English court has ascribed to British Colonial legislatures; the power of superintending the judiciary of the States, of annulling their judgments and commanding them what judgments to render; the power of denying to Congress to raise revenue by a method employed by all governments; making the fundamental sovereign powers of government, such as the power of taxation, the subject of barter between corrupt legislatures, and private adventurers; holding that a venal legislature, temporarily vested with power, may corruptly bargain away those essential attributes of sovereignty and for all time; that corporate franchises bought from corrupt legislatures are sanctified and placed forever beyond recall by the people; that great trusts and combinations may place their yokes upon the necks of the people of the United States, who must groan forever under the weight, without remedy and without hope; that trial by jury and the ordinary criminal justice of the States, which ought to be kept near the people, are to be set aside, and Federal court injunctions substituted therefor; that those injunctions extend to preventing laboring men quitting their employment, although they are liable to be discharged by their employers at any time, thus creating and perpetuating a state of slavery. There is danger that the people will see these things all at once; see their enrobed judges doing their thinking on the side of the rich and powerful; see them look with solemn cynicism upon the sufferings of the masses, nor heed the earthquake when it begins to rock beneath their feet; see them present a spectacle not unlike that of Nero fiddling while Rome burns. There is danger that the people will see all this at one sudden glance, and that the furies will then break loose and that all hell will ride on their wings."

Through all the scheming and chicanery, low, base and underhanded methods, that mortal mind could conceive, with all the publicity that the subsidized press of the monied power could hurl at me, to destroy my good name, these people, the members of this interested organization, with whom I have been associated, knowing the falsity of those accusations made against me, knowing that they brought me into those conditions, have stood loyally and steadfastly by, like the Rock of Gibraltar, willing to sacrifice almost their very lives in the defense of the truth.

Many have been the hours of anxiety through which we have passed, one and all, on this distressing sea of adventure, but no matter how dark at times the future appeared, the burdens of the day have been shouldered, secure in the belief that God is our defense and our deliverance; that this was a sacred duty we owed the christian world to complete this task.

With the hasty dissecting of the celebrated Bogardus case, the Chinese wall, heralded to the uttermost corners of the earth, and hurled at the Bogardus descendants to their humiliation and chagrin, through the capitalistically dominated, non-censored, sand-throwing, mud-slinging, falsifying, puppet-institution, called a "Free and Independent Press," my prayer is, that when health shall return, and my liberty shall be restored to me by my government, I shall likewise be given my constitutional right to print the truth, the full story, which I had so ardently hoped to do ere this, but which, circumstances over which I had no control, have prevented.

With prayers that my readers may be brought to a realization that this is but one of many influential and politically fostered persecutions, which are becoming indeed so prevalent that mutterings are heard in every corner of the universe, and that I may awaken in your breast that cry voiced in those early ages, which caused such sacrifice, such shedding of blood, that you and I, the unborn millions, the comers after might enjoy that which was purchased so dearly

Liberty, Equality, Freedom and Justice

I now close the covers of this book, and submit it for your perusal.

FINIS

A desire to resist and oppose oppression and persecution, of every kind, is implanted in all men. It was this made me espouse this "Lost cause"; for, I could not bring myself into the belief that Providence sent just a few chosen men into the world all ready booted and spurred to ride, and millions ready saddled and bridled waiting to be ridden.

Willis Timothy Gridley.

DISBARMENT

INTRODUCTION

An old maxim of the law, time worn, provides "That he who comes into court, must come with clean hands."

There is a presumption, of course, that the Court's hands are clean.

There are some inalienable rights left, perhaps, to the individual, and I did at one time presume that one of these rights was the privilege of ascertaining who was back of this proposition, which I considered an attempt to frame me.

We would all consider it a preposterous state of affairs, if, when we found a man trying to enter our residence through a window, we are precluded from using the means to rid ourselves of the danger, and that the use of such weapon would be the basis of a charge of attempted murder.

My attitude in this case, was to protect myself against an intruder into a perfectly legitimate business, my investigation of this Bogardus matter. Coming to me, as did Calligari, with all the earmarks of an intruder, I had the right, I thought, to use such means at my command, as would uncover the real Fagin, the arch conspirator. I did not deceive Calligari. His affidavit, and his statements before the Bar Association, are sufficient proof that he was aware I considered he was either being used by the conspirators, or a conspirator himself.

Had I the right to endeavor to ascertain who was back of him, Calligari? Was it unprofessional to do so?

I was asked, in substance, before the grievance committee, would I have acted any differently if the proposition has been considered genuine by me? How could I answer such a question? I never considered that premise, for I was convinced from the first step, that it was a frame up, and my suspicions were well founded as established by the evidence in this case.

We have Calligari's affidavit to prove it. He made the statement before the grievance committee of the Bar Association that I had treated the matter as a frame up from the first, and had told him it was a frame up; but their stenographic record was forged by its omission; for the laws of New York make it a forgery to omit any record or entry in any proceeding.

Calligari did not tell me the first day what he wanted in the contract. He said he would come back.

He did.

He gave me the terms he wanted. He showed me right then that he was trying to enter my house for the purpose of robbing me, and metaphorically speaking I put up the weapon to find out who had sent him; the first paper, as a test, omitting the provisions for which he had asked—$300,000 for $25,000.

He had failed in his purpose, and the Fagin sent him back. He must have a provision in the contract for a recovery; his lawyer said it was not a proper contract; there was no recovery mentioned; his man was taking the risk, he expected big money; he must have $300,000, and have it specified in the contract.

Will any sane man tell me that he would not have dubbed such a proposition a "frame up?" Will any sane man tell me that dealing with a man as slick as Calligari, he would not have been suspicious?

Calligari is suave, clever, well-educated and loquacious.

If what I did was unprofessional, and could have been made the basis of any charges, legally, then every time your dry agents go into a speakeasy and purchase liquor, they have broken the Prohibition Law, and are liable to fine and imprisonment.

Is the fact of addressing an envelope, any proof that you will mail a letter in that envelope?

Is the writing of a letter or a note, any proof that you are going to send it to someone?

In fact, is the drawing of a contract any proof that it will be signed, or that any consideration will pass under that contract?

Such a premise is preposterous on its face.

At the time when this man approached me I was directing a perfectly legitimate undertaking—an investigation for the descendants of Anneke Jans Bogardus, from the affirmative standpoint. Do you believe these conspirators did not know what I was doing?

What was this conspiracy?

Who was the conspirators?

Does the testimony adduced upon the trial of this disbarment action, furnish positive proof of a conspiracy?

These names will be mentioned in referring briefly to this evidence:

1. Calligari, the stool pigeon,
2. Frank L. Boynton, 160 Broadway, New York City, one time clerk in the office of Trinity's lawyers.
3. Trinity's lawyers, at that time Jay & Candler.
4. John N. Drake, lawyer in the offices of attorneys for Trinity Church Corporation.
5. John E. Walker at that time assistant United States District Attorney.

There were two contracts or papers drawn at the request of Alexander Calligari.

One of these contracts was drawn October 8th, 1914, placed in an envelope, and that envelope is post-marked "New York, October 8th, 4 P. M. Station H." addressed to Alexander Calligari, 26 Stone Street, New York City.

The object for mailing these contracts was for a record of the date it was sent and received. I wanted the Post Office Department to be a silent witness for me. I told Calligari I would not deliver the contracts, but would mail them, and I exacted from him a promise that he would bring me back the envelope.

He received this contract, palpably, (from the four P. M. on the envelope) on the morning of the 9th.

Drake testified that the first time he met Calligari was the day that Frank L. Boynton called him to his office to meet Calligari. I asked him the date and he fenced with me for some five to ten minutes, finally producing a memorandum, which he stated was prepared partly by Boynton, and partly by himself. The paper was handed to Drake by the prosecutor Jackson. When Drake looked at it he said, "This is a memorandum of Mr. Boynton's not mine." Mr. Jackson said to him "Partly yours?" Then Drake answered partly his, and partly mine. He then turned to me and said "The date, Mr. Gridley, was October 29th, 1914. It says,

> "Received a message from Mr. Frank L. Boynton, 160 Broadway, to the effect that Mr. Calligari, Roumanian Counsul at New York City, was at his office prepared to give particulars of his conference with Willis T. Gridley in the matter of the $25,000 loan requested by

Gridley to bring proceedings against Trinity Church. Attended at Boynton's office and learned that Boynton, etc.

* * * * * * * * * *

I asked him who told him Calligari was Roumanian Consul, and he finally acknowledged that Calligari told him.

I asked him when the paper, excerpt from which is given above, was prepared, and he told me on the afternoon of the day of the interview, which would be October 29th, 1914.

John E. Walker: Testified, under oath, that he received the contract from Mr. Drake.

I asked him if he had any interviews with Calligari and he said he never had in his life. Said he did not think he ever saw the man, unless he was at the Bar Association at the preliminary hearing, but that he had never spoken a word to Calligari in his life.

He testified that he had not seen Drake for six months until in October, 1914, when he came into his office, and handed him a copy of the paper.

I then asked him if he ever had any telephonic communications with Mr. Boynton. He said never in his life. He then said:

> "My memory is this, Mr. Gridley. I think previous to the time you came to see me in October, within a week before then, Mr. Drake was in twice; on the first occasion he came in and said something about that Mr. Boynton or some acquaintance or friend of his, either directly or personally, or some of his friends, was NEGOTIATING with you for a contract to put up some money concerning this old Anneke Jans affair.
>
> * * * * * * * * * *
>
> He said he expected to have a copy of the proposed contract.
>
> * * * * * * * * * *
>
> The next day he came in and delivered to me this paper here; that is the identical paper, Exhibit 13. * * * * * I think Mr. Boynton was with him.

Frank L. Boynton then testified that he had an interview with Calligari on October 9th, 1914, in the morning; that he eventually showed him a contract which he said this Countryman of his was about to sign. * * * * * "I asked his permission to communicate with the proper authorities. I telephoned Mr. Drake and Mr. Walker."

The first lie is, that Drake makes the date October 29th, Boynton makes it October 9th.

The second lie—Walker said he never had a telephone from Boynton in his life. Merely lapse of memory, I suppose.

The third lie—Walker said he had not seen Drake for six months until October 1914 when he came into his office and handed him a copy of the contract.

Boynton then stated that Calligari gave him a copy of the paper: that Calligari did not want him to have it; that he copied it word for word and line for line; that he made three copies; that he gave one to Walker, either that day, or the following day; then he repeated that he made three copies, and said he gave one to Walker that afternoon, October 9th. The paper Boynton identified was the second contract, drawn October 10, 1914. I asked Boynton if that was the only contract Calligari had shown him, and he said that was the only one. He testified that he read the contract over in the morning, when Calligari handed it to him, and copied it in the afternoon. Boynton stated that he saw Drake on that day.

I then asked him what his impression was as to whether Drake was in the office when Calligari was there on the 9th, and if he had seen Walker with Drake between the time that he saw Calligari in the morning, and the time he saw Calligari in the afternoon.

He answered "Yes, it was the same day; I am pretty sure it was."

He then testified that he had telephoned to Walker on the 9th, and that he took him a copy of the contract either the following day, or within a day or two.

You can see, that he at first was not sure when he delivered the contract to Walker, then it was delivered on the 9th, and then it was the following day, or within a day or two.

I asked Boynton to fix the time he saw Drake and gave him the contract, and he said he saw him twice on the 9th, and gave him the copy of the contract in the afternoon of the 9th.

In reference to the paper used by Drake which was the memorandum prepared for Trinity's register, I asked Boynton when he prepared it, and he said on the same day, and that he delivered it to Drake that afternoon; Said the date was Oct. 9th.

Drake stated this paper was prepared the day of the interview, and that it was October 29th, and it was so dated.

Then I asked him about the Bar Association hearing, and asked him if he was in the room during the entire hearing, and he said "No." I asked him if he had waited downstairs; that I did not see him, and he said "Yes I did."

I then asked "You and Mr. Walker and Mr. Calligari were there talking when I came in, were you not, and he answered "Yes."

I asked him if he introduced Calligari to Walker, and he said he did not remember whether he introduced him or Drake.

Walker testified that he never met the man in his life.

I asked Boynton where he got the information that Calligari had broken off negotiations, and when. His answer was, that his information to Mr. Drake was the same as the memorandum, and that Calligari had told him that afternoon.

I told him that it was a question of a message. That Drake had testified that he got the information by telephone, but that now, he, Boynton was saying he gave it to him.

He answered, referring to the memorandum, "Received a message" that refers to my telephoning to him at 10:50 in the morning. Later I gave him a memorandum, and all those items came in. The PART THAT YOU HAVE ASKED ABOUT, THREE HUNDRED THOUSAND DOLLARS, YOU WILL FIND IN THE THIRD PARAGRAPH OF THIS CONTRACT."

(Witness continuing) "I have already testified that Mr. Calligari told me you promised him that three hundred thousand dollars.

In order that I should make them all stand together in this conspiracy, I persisted, and asked him

"Q. So you knew that Calligari was telling something that was not in the contract, didn't you?"

"MR. JACKSON (the prosecutor: If your Honor please, I must object to this. It is in the contract which is here in evidence, three hundred thousand dollars in figures, and why he complains here and deliberately makes this statement is beyond me."

We will not turn to the Calligari affidavit.

"When I told him that I had found a man who would put up $25,000 to help the Trinity matter, he laughed at me, and asked me immediately who the man was. I did not want to tell him. * * * * * I asked Mr. Gridley to put up some sort of a paper, but that I would return later and tell him what I wanted. * * * * *

"I went back to Mr. Gridley later and asked him to put up a little contract for me to show my lawyer, telling him what I wanted put in it, and I gave Mr. Gridley the name of my lawyer, Mr. Boynton, and his address as 160 Broadway. I called Mr. Gridley on the telephone, and he told me that he would mail it that day. This was October 8th, 1914. He mailed it, and I received it on the morning of October 9th, 1914. When I took the contract to my lawyer he looked it over, and told me to come back later. When I went back he told me it was not a proper contract because it did not mention any recovery. I called Mr. Gridley up, and told him the contract would have to be re-drawn, that the lawyer wanted a clause in the contract that the man would get $300,000. I told him that my lawyer said there must be some recovery in the contract, some return for the man advancing the money. Mr. Gridley answered that he would not draw another contract until I returned both copies of the first contract to him. I went to my lawyer and got the copies of the contract, and took them home with me to Sheepshead Bay, and mailed them back to Mr. Gridley on the morning of October 10th, 1914."

Is there here any mention of the statements made by Drake, Robert Candler, and Boynton, that Calligari was informed, as Boynton states. Look!

> (Page 270 of the Record in the Disbarment Action). He showed me the contract, and after I briefly glanced through it I realized it was a matter with which I was familiar, and told him briefly the history of the actions which had been commenced against Trinity Church, and the conspiracies which had been alleged in regard to those actions and proceedings, and showed him one or two cases reported in the official reports dealing with those cases, and that it had been decided that these so-called heirs had no claim to the property, and advised him that he should not allow his countryman to enter into such a contract. I asked his permission to communicate with the proper authorities, and he gave it. I telephoned Mr. Drake and also Mr. Walker, the United States Attorney's office, and on that afternoon I saw Mr. Walker and Mr. Drake. I saw Mr. Drake in the morning, excuse me."

All right, Now you have Calligari's statement of what occurred, and you have Boynton's. Who is telling the biggest falsehood, for it is palpable they are both handling the truth in a very careless manner?

Here is a very interesting letter, dated on that fatal day, October 9th, 1914:

"October 9th, 1914.

A. Calligari, Esq.,
24 Stone Street,
New York City.

Dear Sir:

After you called upon me this morning I investigated somewhat the matter which you mentioned, and I am anxious to get in communication with you as soon as possible and would thank you to call upon me today. In the meantime please advise your Roumanian friend to have no communication with the other party but simply to say that he has not been able to arrange the deal as yet.

Very truly yours,
Frank L. Boynton."

Where is there any statement here, or anything that would indicate that he had warned Calligari not to let his man go into this contract, when Calligari showed it to him?

So far, so good. Now let us turn to the testimony of Robert Candler, of Jay and Candler, attorneys for Trinity Church.

Preparatory to Candler testifying, there must be an impressive speech by Jackson, in order to have just the right kind of atmosphere for such important testimony, given by such an important personage as Robert Candler, the attorney for Trinity.

> "If your honor please, Mr. Candler is put on the stand here pursuant to promise made at the last hearing relating to certain ledger entries in his firm's books. Inasmuch as these ledgers involve confidential relations between clients of the firm of Jay and Candler and the firm itself, Mr. Candler felt those ought to be testified by himself, and I think so too; (and so do I) so I have asked him to come and testify in response to such questions as Mr. Gridley wishes to ask concerning those matters which were contained in Mr. Drake's examination."

Question by Mr. Gridley: Have you the book, Mr. Candler?

Answer: I have Trinity Church Register here.

Question by Mr. Gridley: Is that the only book in your office that has any entries of matters which your office transacted on behalf of Trinity Church? A. * * * * This is volume 2, Trinity Church register, and it may be there are some entries in some of the books. There is a separate letterbook for Trinity Church.

Question by Mr. Gridley: Does that book show when Mr. Drake first saw Calligari in reference to this matter? Answer: It should. There is an entry here of October 9th, 1914, which relates to Mr. Calligari.

Question by Mr. Gridley: Read what the October 9th entry is. Is that the first entry of any interview between Mr. Drake and Mr. Calligari? Answer: It is not an interview with Mr. Calligari. It is an interview with Mr. Boynton in reference to Calligari.

This should convince you that on October 9th, 1914, Calligari, Boynton and Drake, with the sanction of Trinity's lawyers, had their heads together.

(See page 193, Mr. Candler.)

> "The Witness: There is an entry here of October 9th, 1914, which relates to Mr Calligari.

* * * * * * * * * *

Q. Read it. A. Received a message from Mr. Frank L. Boynton to the effect that Roumanian Counsul in New York, Mr. Calligari, 24 Stone Street, N. Y., had interviewed him in regard to the claims of Anneke Jans' heirs, saying a Roumanian acquaintance of his was about to enter into a contract with Willis T. Gridley by which in consideration of $25,000 to be paid at noon today Gridley would assign ....% of all the fees he expected to receive from the heirs he represented for recovering from Trinity Church by suits and otherwise the land claimed by the heirs; that Gridley had informed the Roumanian that he would get over $300,000 in return for the $25,000 advanced, which was to pay the expenses of the publication by Gridley of a book on the subject, and of the actions to be brought. Mr. Boynton advised Calligari to tell his client there was no hope of success in such actions and that the claims were fraudulent, accordingly when the Roumanian met Gridley

YESTERDAY

afternoon by appointment to sign contract and pay over the money, the Roumanian told Gridley that he had considered it and would not pay the money. Mr. Boynton and Mr. Drake called on Mr. Walker of United States Attorney's staff who promised to lay the whole matter before the United States Attorney and also to consult Judge Hand in the matter."

This is absolute and positive proof that these people were all together on the 9th, whether they were before that date must be left to conjecture, and I am not giving conjecture in this book. I am giving absolute sworn facts and proofs.

Hence these people, before Calligari had mentioned to me anything about the $300,000, had the contract specifying that amount, which had not been drawn, in their hands, and making entries in regard thereto in Trinity's register.

Now mark! "Accordingly when the Roumanian met Gridley yesterday to pay over the money." This entry was dated October 9th. Hence "yesterday" was October 8th. Calligari did not come to me until the 8th to tell what he wanted in the paper. Hence you have Trinity's lawyers talking about something which was not in existence when they made the entry that "When the Roumanian met Gridley yesterday afternoon by appointment to sign contract, etc."

Calligari says that he called on me Tuesday, October 13th, to make arrangements for me to come down and get the money.

Walker said when he saw Drake on the 9th, they were negotiating for a contract.

Boynton's letter makes his own testimony, and Trinity's registry false, for he told Calligari on October 9th "To have no communication with the other party, and simply to say that he has not been able to arrange the deal as yet."

Bearing in mind that Boynton states he gave the copy of the first contract to Drake on the same day Calligari was at his office with it, October 9th, 1914, please digest the next entry in Trinity's Register, testified by Robert Candler:

Q. By Mr. Gridley: What is the next record of an interview?

A. On October 10th.

Q. Whom is that with?

A. That is not an interview, that is simply a memorandum of the receipt of a copy of the proposed contract.

Q. Then read the entry, will you please?

A. Received from Mr. Boynton a copy of the proposed contract of Gridley and handed it to Assistant U. S. Attorney Walker.

Note testimony page 284: Boynton's testimony.

Q. On the second visit in the afternoon, did you tell Drake that you had a copy of the contract? A. I showed it to him.

Q. That is all you did, is that right? A. I gave it to him.

Q. Now you are getting at it.

Mr. Jackson: He has already so testified.

Mr. Gridley: I am trying to see if he can do it twice; that is all.

The entry in Trinity's register states that the copy of the contract was received on the 10th. Boynton testified that both he and Drake delivered the copy to Walker the same day the copy was made, October 9th, 1914. But the immaculately, absolutely, and unqualifiedly truthful statements of the Church register should prevail, which was that they received a copy of this famous piece of paper, requested by their stool pigeon, containing the promise of a reward of $300,000 for the $25,000 mythical loan, and delivered it to Walker, on the 10th of October, 1914.

It was a lie in either event. The contract containing that provision was not drawn until the 10th, and could not have been received by Calligari until the 13th on account of the 11th being Sunday, and the 12th a holiday in New York, and Calligari acknowledges he did not receive number two until the 13th.

The envelope in which the second contract was mailed was produced upon the trial, it was dated October 10th, 11 P. M.

Refer back to Calligari's affidavit:

"When I went to Mr. Gridley about the second contract, and told him that I wanted the $300,000 in it, he became more suspicious of me, and asked me several questions. Asked me if I had a lawyer, and I told him yes, because that was absolutely true. I asked Mr. Gridley to make out the contracts at once so that I could get the matter closed before Sunday, but he said he had to think the matter over, and would mail them to me. I was annoyed at him and told him so; that he was delaying matters; that I wanted to have the matter closed on account of Saturday being a short day, and the next day Sunday, that Monday October 12th would be a holiday, so that nothing could be done until Tuesday. He promised he would mail them to me; that he would phone me later, but this he did not do."

By this time no doubt my readers are convinced that Calligari, Boynton, Trinity's lawyers, Jay and Candler, John N. Drake and John E. Walker, had their heads together, and had engineered themselves into absolute proof of that fact, in the hearings before this referee; that you not alone have their own sworn testimony, but you have the entries in Trinity's register to certify to that fact. That they had the stool pigeon negotiating for a contract, that they had that specific contract in their hands on October 9th, 1914, according to their testimony, each one being made to testify that he noticed the $300,000 reward in the contract, just four days before that particular contract could have been received by them, and one day before it was drawn.

We will now proceed to the winding up of the conspiracy.

Calligari's affidavit says: Before I went to my office Tuesday morning I called in to see Mr. Gridley, to make arrangements for him to come down and meet my man at the bank and get the money.

When I saw Mr. Gridley he told me he was not coming down to get the money; that he knew the ways of New York; he said if I wanted to go ahead with the deal, I would have to bring my man and his lawyer up to his office, and anyone else he wanted with him, and that he would have as many friends as he wanted with him.

He made it quite clear to me that he knew, although I might be innocent in the matter, that the people back of me intended that he should go to the bank and get some marked money. * * * * * that before any money passed there would have to be another agreement made, and that the only thing we could do now would be to make a supplemental arrangement whereby this money would be deposited in bank.

I want to say here, as I said before the Grievance Committee that Mr. Gridley made it clear to me by his actions and what he said that he was trying to find out who was back of me, because he considered it a frame up. I could not convince him to the contrary."

"When I got down town I got the second contracts and took them over to Mr. Boynton."

Tuesday, in that week, was October 13th, 1914.

At page 1161 of the record of the disbarment trial, some five months after Boynton's first testimony in regard to the contracts he returned—and testified as follows:

Question (By Mr. Jackson): Mr. Boynton you were a witness for the petitioner in this proceeding? A. I was.

Q. Since then you have examined your testimony?

A. I have.

Q. Did you find a certain point concerning which you wish to make a correction; if so state what it is, and just what correction you wish to make. A. In regard to my identification of the contract which I testified Calligari handed to me October 9th, 1914. At the time of my former testimony I did not know there was more than one contract in existence. I identified its appearance without comparing it. If you will permit me now, I will give you the exact testimony. This exhibit 35 is not the one Calligari gave me.

Q. (Still by Mr. Jackson): How did you come to make the identification before Mr. Boynton. A. The general appearance, the typewriter paper, and the cover appeared to be the same, and the first page is the same, but there is a clause inserted, which was not in the copy he gave me.

Q. (By Mr. Jackson): You are sure, however, that the other exhibit of the contract No. 13, is a correct copy of the contract Calligari gave you. A. Exhibit 13 is the original of the three copies made in my office, and I know it is the exact copy.

Q. You compared it yourself? A. Yes.

Q. (By Mr. Gridley): When did you first see Exhibit 35? I cannot say now, because it is not the one Calligari gave me on the 9th of October.

So that when he said in his previous testimony that he was sure Exhibit 35 was the contract that it was the only one he ever saw; that it had specified $300,000 recovery; that he copied it word for word and line for line; when the record was made up for the Trinity register, stating that $300,000 recovery was promised; Walker's, Drake's and Candler's —all this testimony—was proved to be a lie—was found out to be a lie—and Boynton was recalled to the stand to try and fix up the mess. In my opinion it made a worse mess of it then before—what do you think?

Calligari in his affidavit excuses himself with the statement that he did not know Boynton was working for Trinity's lawyers. He said that Boynton told him he would look over the contracts and for him to come back later, so all that tall talk about telling the man it was something he must not have anything to do with, is gallery god play, for the benefit of the trial.

The criminal part of this is, that this conspiracy was really an attempt to do what was done in this illegal indictment start a criminal proceeding upon what, a conspiracy? A trap? A frame up?

Just imagine if you will that this was conceived, fostered, and promulgated in the very presence of a representative of Trinity Church!

The only reason in the world I drew the contracts was to find out who was back of Calligari—this is proved by my insistance that I would not go after the money; that the man had to come to me with his lawyer. When Calligari went back to Boynton with that statement these conspirators knew the jig was up; that I would not go further with their tool.

They made one grave mistake; Calligari should have had a man to put up the $25,000. He should have been warned. His "Wall Street Broker" did the trick, and awakened into action, suspicions I had already, because of his eagerness to discuss the Trinity Church matter.

The man himself convinced me he was in the hands of master minds, who were directing every move. What was to be done, and what was to go into the contract?

Of course Calligari could not give the name of the possible donor, because there was none such—so when pushed, he said the worst thing he could have said "Wall Street Broker."

A little further proof of the activities of Trinity Church in my disbarment:

I will give you here verbatim a letter written to Einar Chrystie, Counsel for the Grievance Committee of the Bar Association, dated October 23rd, 1914, five months before Calligari signed his affidavit. It is as follows:

Dear Mr. Chrystie:

In the Matter of Willis T. Gridley, an attorney:

Referring to the above named matter you will please find enclosed a copy of an agreement in blank, which a few days ago, together with a memorandum in reference thereto, was handed to us by an attorney in this City formerly connected with this office.

Without at this time troubling you with details, we wish to say that, as appears from the memorandum, our correspondent was approached on or about the 9th inst. by the diplomatic agent of a foreign country having an office in New York, who, in the interests of a fellow countryman, desired to know whether there was any foundation in fact for the claims made by certain persons calling themselves heirs of Anneke Jans Bogardus against the corporation of Trinity Church; that his fellow countryman was about to pay over to the said Willis T. Gridley the sum of Twenty five thousand dollars in cash, and to execute the said

agreement, having been convinced by the said Gridley that the claims were just and that Gridley would recover as the result of bringing actions against Trinity Church corporation a large tract of land and other property in this City and elsewhere; that the money was to be paid on that day could our correspondent give assurance that the claims were valid.

It further appears that being informed by our correspondent that the claims were without merit and were of a similar nature to other claims which had been made from time to time by unscrupulous persons, the prospective party of the second part to the proposed contract advised Gridley that he would have nothing to do with the matter further.

We are informed by our correspondent that he can at any time procure the names of all the parties to the above matter and can also at any time, obtain for the use of the authorities the original contract in blank from which the enclosed copy was made.

We will be glad at any time on hearing from you to arrange an interview with the parties for such further action on your part as may seem advisable.

Yours truly (sgd) Jay & Candler."

Does not this sufficiently connect Trinity with this holy—sanctimonious episode?

Why was every effort of mine, to force the disclosure of this Wall Street Broker, alias fellow countryman, Roumanian, and lastly, alias Greek, as stated in Galligari's affidavit, blocked?

Does this convince you there was no such party in existence; no one to defraud as alleged?

Does this not convince you that these officials used all their influence to keep this out of the record?

Had such a party been produced and put on the stand, might not the whole conspiracy have been exploded?

When I asked the question persistently of Galligari, before the Grievance Committee, he continually refused, until protected by a member of the Committee, who said "He has said that he does not want to tell you Mr. Gridley."

Did they afford me any protection?

Oh, no! I was the vulture, the schemer, praying upon this poor, misguided, ignorant, innocent Roumanian, who told them he was Roumanian Consul, and a member of the Roumanian Bar.

Such guileless innocence, under the tender care and keeping of Boynton, Drake, Walker, Jay and Candler, before the contract was born!

There was no Roumanian Consul in New York, and it did not take me five minutes to find that out.

Did they know this?

Were they making any false entries in their register?

What for?

The following excerpts are taken from the hearing before the Bar Association, in order to show the difference between the allegation in Calligari's affidavit—the complaint—and his testimony before the grievance committee when I was present, showing a marked difference from anything said, done or written, by Trinity's lawyers and their co-framers—

(page 324):

Q. How did you know Mr. Gridley wanted any money to put into it?

A. Well, I did not know it. I thought myself, "If you need any money I am prepared to find it for you. I really proposed it to Mr. Gridley."

"Q. Did I tell you that? Did I tell you that I knew this was a frameup? A. Yes, Mr. Gridley told me he believed it was a frame up.

The Chairman: When did he tell you that? A. I really don't remember when he told me, your honor. I really don't remember when he told me that, but I remember that he did tell me this was a frame up."

There being nothing unprofessional in the work I was doing at that time for the Bogardus descendants, there was nothing upon which any charges could be based. What more natural then, than those interested should cast about for a stepping stone, and the stool pigeon Calligari entered at the opportune time.

Boynton had known Calligari for years. Calligari had not known Mrs. Winterfield long before she told him of the Baker estate matter. He said he would try and get her some money so that it could be pushed. Now who would he go to and talk about that—Boynton, his friend. Wouldn't it be natural to mention my name, because I had written some letters for Mrs. Winterfield's mother in the matter?

The scheme was that I was to make a statement in regard to the Baker matter upon which Calligari was to raise money. I refused. He then talked of the Trinity matter, which aroused my suspicions, for he switched at once, and said "well if you won't take money for the Baker matter, let me get you some money for this Trinity matter." Reader, is there anything here to arouse a man's suspicions?

Hence, I charged that the unprofessional conduct was on the part of Boynton, Drake, Jay & Candler and Walker, who conceived the scheme in the first place, and sent Calligari to me to have the paper drawn; and to think that with all this evidence before the Appellate Division, of Boynton, Drake and Walker being together, before even the paper was drawn, and all things pointing to the fact that they were directing Calligari, they were absolved, and I was disbarred.

They ought to be proud of this!

They were out to catch me, and I was out to catch them, and we were doing it through the same source, the stool pigeon. What is the difference? I'll tell you, they had the influence, and I had none.

They were bound to get the marked money on me, and when they found I would not bite that far, they had to quit.

Some people can get away with murder!

With uncontradicted testimony before the Appellate Division, that this matter was treated by me as a frame up:

With proof of the frame up, or conspiracy furnished to the Appellate Division, out of the mouths of Boynton, Drake, Jay and Candler and Walker:

With Calligari admitting that I never asked him for money; that he, himself, came to me and offered it; that I refused to accept it; that it was he urged the matter:

With Calligari's statement before the Grievance Committee, that he had taken the contract to his lawyer:

With Calligari's positive statements before the Grievance Committee that I considered this a frame up; that I had told him so:

With all this, will you tell me how the Appellate Court, with any idea of justice, could have assumed that anybody was going to sign any contract prepared for Calligari?

Was this justice? To disbar a man on nothing but speculation as to whether or no he would do that which the evidence establishes he never intended doing?

Is this American justice?

How many hands need cleansing?

In view of these brief excerpts from the evidence and records, will you believe any published opinion, embodying this paper, coupled with the statement assuming that contract was to be signed, a true report?

CHAPTER NINE

Disbarment

Retainer Form Used by Author
1914-1917

Conditions Appearing on the Reverse Side of Every Letter
Written by the Author in Connection with
His Investigation
1914-1917

An Affidavit by the Informant, Alexander Calligari,
After the Disbarment

Excerpts From Public Records of Papers Filed With the
Appellate Division of the Supreme Court of the
State of New York
In the Disbarment Proceedings

A Public Record,
Petition to the Legislature
of the
State of New York

Plate Seventy-nine

RETAINER

Dated at.....

State of.....

.....

To:

WILLIS T. GRIDLEY,
ATTORNEY AT LAW,
NEW YORK CITY, N. Y.

Sir:

The undersigned understands you are collecting data, records, proofs, etc., etc., incident to the questions relating to the alleged passing out of the title to the lands granted Anneke Jans Bogardus, and thereafter in 1667 confirmed by Governor Nicolls unto her children, and are compiling genealogical records to ascertain who are the living descendants of the said Anneke Jans Bogardus, as also the Koch, Webber and Edwards descendants.

For years past it has been a matter of common talk in our family that we were descendants of.....and solely for that reason I am interested in having the above investigations in your hands completed once and for all, and a report made that the facts may be brought to light, and that all may know, and to that end I voluntarily and unsolicited by you, and without promise of reward or return, desire to retain your services in conjunction with any others who may desire to do likewise, solely for the purpose of having you complete such investigation, and for your services in that connection I pay you now a retainer of $.....and agree to pay you monthly from date the further sum of $..... until sixty days notice given for the period of six months, at the expiration of which time all further payments shall cease.

I agree to aid you by furnishing such data and records affecting my genealogy as I am able.

I also wish you to understand that the above payments will not in any way embarrass me, and that anything you have said or written in no way influences or prompts me in giving you this retainer, but that I am solely moved by a desire to have the investigation completed promptly and uninterruptedly.

WITNESS my hand and seal the day and year above written.

(L. S.)

(Full Name).....

(P. O. Address).....

C O N D I T I O N S

1126 - A - 1914

Clients must pledge their utmost support and protection to their said attorney against any attack whatsoever, upon his right to represent them respecting the matters covered by their contract of retainer, and to that end or purpose the following stipulations or pledges shall govern and apply to each and all transactions:---

A. No discussion or correspondence as to details with anyone not a client shall be expected from said attorney, and no opinion report or statement shall be expected from said attorney until every public office, library, source of proof, data and records, respecting the questions to be investigated, as defined by the contract of retainer, including the genealogical work, has been thoroughly searched, and reliable proofs in attorney's keeping to fortify and back up any opinion or statement. Attorney refuses to guess or presume as to the facts.

B. Clients must assume sole responsibility for financing said investigation, the sucess or failure of which depends in a measure thereon, as in all business undertakings. Clients must accept the risk as a business venture, and recognize attorney can only proceed as fast as finances justify, and whatever clients do to enlist public support or interest must be solely on their own responsibility. All funds furnished said attorney must be contributed voluntarily, without promise of return or reward, and without any inducement or guarantee, verbal or written, from said attorney; but solely moved and prompted by client's desire and purpose to support and finance said investigation to its final conclusion.

C. To notify said attorney, to prevent miscarriage of mail, of every change of address, and by leaving with proper postal authorities correct forwarding address, and all communications mailed to last given address, and enclosed in a postpaid envelope shall be deemed good and sufficient.

D. Said attorney shall not be held responsible for, or required to delegate any authority to anyone to publish, duplicate or circulate, printed or other matter, and any such heretofore or hereafter sent out or received is upon the sender's own personal responsibility, and for which said attorney shall not be held responsible or charged with for any purpose. Only letters or communications bearing said attorney's personal script signature shall be regarded as coming from him; and each client shall return to said attorney each envelope containing letters received from him, with the date and hour received endorsed thereon, and at the same time report any indications of any interference with mail matter, and be continually on the watch for spies, believing that eternal vigilance is the price of success in all things. Any paper requested returned by said attorney, shall be returned to him.

E. All statements are subject to correction when error or mistake is discovered, or, as other proofs come to light, or to attorney's attention. To avoid error or mistake, by oversight inadvertance or otherwise, clients must recognize the foregoing conditions to have precedence over anything said or done by said attorney.

130

Fol.1 SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION: FIRST DEPARTMENT.

IN THE MATTER

-of-

WILLIS T. GRIDLEY,

an attorney.

STATE OF NEW YORK :
: ss.:
CITY AND COUNTY OF NEW YORK :

#2 I, ALEXANDER CALLIGARI, being duly sworn do depose and say:

I have known the above named Willis T. Gridley for several years. I have been informed that it was upon my affidavit made to the Bar Association in New York that the charges were made against Mr. Gridley, which later developed into his disbarment. When these facts were told me by Mrs. Winterfield, I told her that I wanted to see Mr.Gridley, and make a statement for him which would vindicate him. Mrs. Winterfield told me that she would make known my wish to

#3 Mr.Gridley.

Later, in the Spring of 1922, I met Mrs.Wright in front of the Times Square Post Office on West 39th Street. Mrs. Wright was very indignant with me, and we got to talking. I then told her that it was all a mistake, and that if Mr. Gridley would only see me and let me do it, I would come forward with a statement that could not fail to vindicate him. I told Mrs. Wright that I had sent several messages to Mr. Gridley through Mrs.Winterfield, but that he would not see me, and I asked her to take the matter up with him, and to assure him that I wanted to make things right for him, and to ask him

Fol.4 to see me.

I met Mr. Gridley in the Spring or Summer of the year 1914, through Mrs. Winterfield, and at about the same time I also met Mrs. G. Wright, her daughter Betty, and a Mr. Charles Howe. At about this time Mrs. Winterfield had asked me to try and obtain funds to push work on an estate matter in which her mother, Mrs. Bullmer, was interested, and I told her that I would be able to raise some money for her if she could give me a statement or a letter upon which I could raise money. She then told me that Mr. Gridley had been doing some
5 work on it, and she took me to see Mr. Gridley to get him to give me a statement of some kind so that I could raise the money for her. Mr. Gridley, after this interview, wrote me a letter, but it was not sufficient for my purpose, and I told Mrs. Winterfield it would not do, and for her to tell Mr. Gridley. It was during these several meetings that I learned about the Trinity matter from Mr. Gridley. He told me that he was making an investigation, getting together records, etc. but at no time did Mr. Gridley tell me that he contemplated a lawsuit against Trinity. I remember that he made it particularly clear to me
6 that it was an investigation. Mr. Gridley positively never asked me to raise any money for him, nor even suggested it to me. Further, when I went to see him in October and told him that I had found a man who would put up $35,000. to help him in the Trinity matter, he laughed at me, and asked me immediately who the man was. I did not want to tell him the man's name, so I told him that it was a Wall Street broker. The minute I said that Mr. Gridley laughed and said that I was right in Trinity's nest; that no Wall Street broker would dare do anything in this matter against Trinity Church; that if he did he would be put out of business. I then told Mr. Gridley that I should need

-2-

Fol. 7 some sort of a paper, but that I would return later and tell him what I wanted - that is, some sort of a contract. Just before I left Mrs. Wright came into the room, and I told her that I had found a man who would put up $35,000 to help along the work they were doing. I told her that it was a Wall Street broker because she asked me the name, and then she too laughed, and said that it was all bunk. Miss Betty Wright was in the room while I was talking to Mr. Gridley, and I can positively state that I never saw Mr. Gridley alone; there was always someone either in the same room, or in the next room with the doors open between
8 the two rooms -- Mr. Gridley's office and the sitting room.

I went back to Mr. Gridley later and asked him to put up a little contract for me to show my lawyer, telling him what I wanted put in it. I gave Mr. Gridley the name of my lawyer Mr. Boynton, and his address as 160 Broadway. On Thursday as I did not receive the contract as promised, I called Mr. Gridley on the telephone, and he told me that he would mail it that day. This was October 8th, 1914. He mailed it and I received it on the morning of October 9th, 1914. When I took the contract to my lawyer he looked it over and told me to come back to
9 him later. When I went back later he told me that it was not a proper contract because it did not mention a recovery. I called Mr. Gridley, and told him that the contract would have to be redrawn, that the lawyer wanted a clause in the contract that the man would get $300,000. I told him that my lawyer had said there must be a recovery in the contract, some return for the man advancing the money. Mr. Gridley answered that he would not draw another contract until I had returned both copies of the contract to him. I went to my lawyer and got the copies of the contract and took them home with me to Sheepshead Bay, and mailed them back to Mr. Gridley on the morning of October 10th, 1914. I showed the contracts to Mrs. Winterfield

Fol.10 and others who were sitting at the dinner table, as they were all interested in it, and I remarked that the contracts did not suit my lawyer and would have to be redrawn.

I did not tell Mrs. Winterfield the name of the man who was to put up the money, or anyone else in the house, for I did not want them to find out, but I told Mrs. Winterfield that it was a Wall Street broker; that the man had a son who was persuading the father to put up the money so that he could get $5,000 out of it to buy an automobile.

I know that Mr. Gridley was suspicious of me from the
"11 time I told him it was a Wall Street broker, and would not give him the name of the man, when he asked me. He made that very plain to me; that he knew it was a frame-up - either with or without my knowledge he did not know which.

When I went to Mr. Gridley about the second contract, and told him that I wanted the $300,000 in it, he became more suspicious of me, and asked me several questions. Asked me if I had a lawyer; and I told him yes, because that was absolutely true. I asked Mr. Gridley to make out the contracts at once so that I could get the matter closed before Sunday, but he said he had
"12 to think the matter over, and would mail them to me. I was annoyed at him, and told him so; that he was delaying matters; that I had wanted to have the matter closed on account of Saturday being a short day, and the next day Sunday, that Monday October 13th would be a holiday, so that nothing could be done until Tuesday. He promised he would mail them to me; that he would phone me later, but this he did not do.

The next day Sunday I talked things over with Mrs. Winterfield, and I told her that she should have something out of the money for the introduction; that it was customary. I told her

Fol.13 to go up and see Mr. Gridley and get a writing from him to the effect that he would pay her a commission of $1,000 out of the money advanced by my friend. I did not accompany Mrs. Winterfield, but her niece Mrs. Hazel Davis did. Just before the dinner hour Mrs. Winterfield called on the phone and asked me to go up to Mr. Gridley's place; that there had been a fuss there; that when she asked for the writing as to the commissions they had been angry; that they were asking the name of the man, and she said that she did not know; that Mr. Gridley was insisting that it was nothing but a frame up, and she wanted me to come up there and assure him that it was
"14 bona fide. I did not want to go, but after some persuasion I did. When I got there they were ready to sit down to dinner, and I partook of dinner with them. There were several there. At the table Mrs. Winterfield repeated what Mr. Gridley had said in substance that he did not believe there was any man ready to put up the money; that the thing was suspicious on the face of it because I would not give him the name of the man. So then to assure them I gave them the name of Chatterly -- Leo Chatterly -- that the man lived on East 37th Street, and owned property there. When I said that name there was a chorus of "Chatterly -- you mean Satterlee -
"15 why that's Morgan's son-in-law, he's a pillar of the church". Now this was October 11th Sunday, and as I had not yet received the second contract I called Mr. Gridley's attention to the fact that the next day was a holiday, and that therefore I could not get the contracts until Tuesday morning.

Before I went to my office Tuesday morning I called in to see Mr. Gridley, to make the arrangements for him to come down and meet my man at the bank and get the money. When I saw Mr. Gridley he told me that he was not coming down to get

Fol.16 the money; that he knew the ways of New York; that he had been out for a walk the night before and he had been followed, that he knew why. He said if I wanted to go ahead with the deal, I would have to bring my man and his lawyer up to his office, and anyone else he wanted with him, and that he would have as many friends there as he wanted. He made it quite clear to me that he knew, although I might be innocent in the matter, that the people back of me intended that he should go to the bank and get some marked money. I told him that I could not get my man to come up there; that he was a big man, and he said well he would not go down to any bank; that before any
"17 money passed there would have to be another agreement made, and that the only thing we could do now would be to make a supplemental arrangement whereby this money would be deposited in bank. I told Mr. Gridley that I would see my man, and see if he would come up there and let him hear from me later. I want to say here as I said before the Grievance Committee that Mr. Gridley made it clear to me by his actions and what he said that he was trying to find out who was back of me, because he considered it a frame up. I could not convince him to the contrary.

When I got down town I got the second contracts, and
"18 took them over this time to Mr. Boynton. I called Mr.Gridley on the telephone and told him that my man wanted to take the contracts to a Mr.Walker -what should I do. Mr. Gridley told me to let my man take the contracts to Mr.Walker or anyone else he wanted; that he was entitled to know what he was doing. Later I telephoned to Mr. Gridley and told him that my man had been to Walker and he told him not to have anything to do with the matter,and that the deal was off. Mr. Gridley answered "Just as I expected - return the contracts to me at once, please." I did not return

*19 the contracts to Mr. Gridley that day, but took them back to Sheepshead Bay, where I told the folks, that is, Mrs. Winterfield and family, that the deal had fallen through. The next morning, October 14th, I went up to 91st Street, and gave the contracts to Mr. Gridley.

I want to say that when I took the contracts the first time to Mr. Boynton he did not let me know that he was working with Trinity's lawyers. He simply told me he would look them over and for me to come back later. When I went back later he told me to have nothing to do with it.

*20 A few weeks after Mr. Boynton called me up and told me that he wanted me to go to the Bar Association in the matter. I told him that I did not want to go; that if I went I would not say anything against Mr. Gridley, absolutely; that he had never asked me to get any money for him or his work; He insisted on me going to the Bar Association, and I did go, but some months later.

When I went to the Bar Association I gave them the facts as stated above. I never told them I was a member of the Roumanian Bar; I never told them I was Roumanian

*21 Consul, nor did I ever tell them that the man was a Roumanian who was to put up the money. I never gave them the name of the man, but I told them the man was a Greek — by them I mean, Mr. Boynton, Mr. Drake, Mr. Chrystie, Mr. Hoar, or anyone else I met, either at Mr. Boynton's office, Jay & Candler's office, or at the Bar Association. I am positive of this, and if my statement or affidavit states anything different to this, it is false and not correct. Mrs. Winterfield and Mr. Gridley have told me that my affidavit made at the Bar Association stated

-7-

Fol.22 that the man who was to put up the money was a Roumanian; that I was Roumanian Consul; that Mr. Gridley had asked me to obtain money for him, and I want to state here that if that is in my affidavit, it is false, and not correct, and that I made no such statements, either in Mr. Boynton's office, Jay & Candler's office or at the Bar Association. When I signed the affidavit I did not read it, for I of course thought it was the statement which I had made, therefore I did not bother to read it.

Later when I was asked to appear and testify at the
*23 trial under oath, I refused to do it, and I told both Mr. Boynton and Mr. Chrystie this. They knew that I would not go on the stand for them against Mr. Gridley. Shortly after this I left for Paris.

I have never seen or talked with Mr. Gridley since the day I saw him at the Bar Association before the Grievance Committee when I testified, with the exception of one time I saw him on the subway, but did not speak to him, until the day I made the statement before the stenographer from which this affidavit is drawn. At the time I made the statement there
*24 was present Mr. Gridley, the stenographer, Mrs. Winterfield and Mrs. Wright.

I can positively state that after I had been interrogated before the Grievance Committee of the Bar Association, I went back to the rear of the room and sat down with Mr. Boynton, and while the discussion was on with Mr. Gridley I came forward to the table again, and voluntarily stated to the Commitee that I had always designated this man to Mr. Gridley as a "Wall Street broker" and that Mr. Gridley had always claimed it was a frame up. If this is not in the record, then the record does not contain a truerecord of what I said. I remember

*25 this absolutely.

I have carefully read the foregoing affidavit, word for word, and know its contents, and can state that the same is true in every particular; that I make this affidavit voluntarily and without promise of reward, and to the end that justice may be done Mr. Gridley.

Subscribed and sworn to before: :
me this 21st day of May, 1923 :

Al. Calligaris

*26

Notary Public, Kings Co. No. 340
Certificate filed in N. Y. Co. No. 283
Kings County Register's No. 5144
N. Y. County Register's No. 5252
My Comm. Expires March 30, 1925

A PUBLIC RECORD.

Excerpts from Papers Filed With the Court in My Disbarment Proceedings.

Is it not a fundamental rule of our Courts of Law that a complainant to be heard must come into court with clean hands? Why then should there be one rule for the poor and another rule for this monster of a religious corporation, represented in this case by the Bar Association.

Have you ever known of it in the annals of time that the Government of the United States could put counterfeit money into a man's pocket, and then could prosecute the man for having the counterfeit money on his person. This is just what Trinity Corporation is seeking to do here, having instigated this plot, she has been the author of these proceedings, and that is just what this report of this referee covers up. Everything that has to do with this part of the testimony, he has either ignored entirely, or has touched it so lightly, that he might just as well have ignored it.

The testimony given upon these hearings is replete with evidence of this plot or conspiracy, and the fact is palpable that the derivation of it came from nowhere else but among those who are affiliated with, or who represent Trinity Corporation. This testimony in the main was dragged from the mouths of their own witnesses, has this referee referred to it in any particular — not one word.

In all fairness I ask you then, is there any other conclusion for a man in my position to come to, after having been subjected to the treatment I was at the hands of this referee, and then on top of it to have this report filed, knowing full well that the evidence does not bear out his statements, except that this referee loaned himself to just what the Bar Association loaned themselves, when they entertained these proceedings, to be the tool of this monied corporation to further its ends, and not the ends of justice as they are sworn by their oaths they will do.

What is the value of such an oath—where is the sanctity of it—it is as sacred to them as religion is to this religious business-corporation.

This referee is well known in this community for his ability to serve the capitalistic interests during his judicial career, and is here attempting as he is passing down into the shadows of his life a worthy ending to that career, leaving behind him a monument of his ability to sidestep the rules of law, honesty and justice, when a capitalistic interest is involved.

We have heard, as we do of this referee, the seeming virtues of just such people lauded to the skies, and verily you will always find that those who laud the loudest have been those who have been able to obtain the greatest amount of patronage, and whose interests that man has served the best. It is so in this case. Mindful of just what sort of interests have been this referee's pet hobbies for years, I asked this court, at the outset of this matter, to take into consideration the fact that this man's affiliations with the Bar Association for so many years, disqualified him from being able to render a fair, unbiased opinion, or from even conducting an impartial hearing of this matter.

These proceedings had no more than begun, before I found that I was right, and that this referee was playing both the prosecutor and referee in this proceeding. I had to tolerate the most unheard of procedure, upon the part of this referee, he even going to the extent of shouting "You shut up" and such language equally as dignified for a justice to use, and with gestures equally as dignified.

I say again, what I have said before, you could not expect any different treatment from a man of Judge Freedman's age. You have only to look around you and picture the men of his age that you know personally; would you consider one to be capable of cool judgment. After a great deal of persistency, and after having been treated with the utmost discourtesy, I was able to have some of my friends who were interested to witness this performance, admitted into the room; although it had never been objected to on the part of this referee if the opposing counsel wanted anyone there. All this was merely of a piece with this mockery of a proceeding; the opposing counsel ran things as he wanted; all he had to do was to jump up and object, and whether he understood it or not, the referee would sustain the objection.

I remember it was not until towards the very end of the matter that he relented enough to overrule a few objections of the opposing counsel; but this did not encourage me, for I had decided then what his report would be from his attitude, and I considered his ruling with me then, was merely for the purpose of petting the lamb a little bit before being led to the slaughter.

As in all matters of this kind there would naturally be adjournments wanted by both sides. Adjournments were all right so far as the other side were concerned, but when it came to me, that was a different matter; my requests were immediately met with the most unseemly bully-ragging. If I pleaded my health I was told that he did not want to hear it; that he would not hold up that matter for me; the steam roller had started then with all its beastly regularity. I was not even allowed time between the hearings to get the minutes of the last meetings, in order that I could have some chance to proceed intelligently.

Would this attitude of the referee induce any man to think that he was capable of, or that he was even contemplating giving a fair consideration to my side of the issue. I candidly state that I do not think anyone else in my position would have reached any other conclusion than the one I reached at the outset, and that was that his mind had already been made up, long before the proceedings had even started, and that he wanted to get the useless matter of hearing my witnesses out of the way as speedily as possible in order that he could render that decision.

If I studied over a question a little Mr. Jackson would jump up and say we were wasting time.

When Mr. J. N. Drake was on the stand he was allowed to go into a long desertation about how he had traveled all over the country in years gone by, long before I had anything to do with this matter. Therefore, how was it relevant to me; this was done over an objection of mine. He was allowed to take the different cases in which this issue has been involved, and give his opinion as to what they were, what they were brought for, etc., but when I sought to cross-examine him on that point, I met with a storm from the referee, and told that I had proceeded far enough, and that the books would speak for themselves. All this is borne out by the testimony itself. The hearing when it came to my side of the matter proceeded with so much speed that, as I have above stated, I did not have time to prepare, I did not have the time to get the minutes of the hearing which had gone before. I was on April 28, May 1st, May 4th, May 8th, and my requests for an adjournment, and an admonishment to this referee that I had been in ill health since a break down which I had suffered in 1912, when I had gone out of general practice, made no difference to him, he forced me on, as above stated, until I succumbed to a relapse of

my old condition, and was under the doctor's care all that summer, and the matter went over to October.

When October came I did not get any more mercy from him; then matters were worse for he forced me on every day, as the record will show; so much so, that when it came to going on the stand myself I was utterly exhausted in body and mind; and this mind you in the face of the fact that the referee had two doctors' certificates in May showing that too much strain might end disastrously for me.

This referee makes much of the fact that I would not answer questions, and that I avoided the issue—I did not—I simply at times could not get control of myself at all, and I would be able to answer for a short time, and then the voices would seem to go away from me entirely. I wrote a letter to his majesty telling him that my health was such that the hearings were too trying for me, and I called this to his attention on page 1133 of the testimony:

> "I fear from what my assistant has said that I must have been answering questions yesterday like a drunken sailor. You probably know, as I wrote you that I did not feel I could go on from day to day. THE REFEREE: I don't know that I do know it—don't put it on me."

He had my letter, and the two doctors' certificates showing my condition, and yet he states "I don't know that I do know it." If this man was any other than a referee in this face of this palpable proof, you would judge that his ability to tell the truth was suffering a little, would you not? Therefore, I state again, I want my testimony that I gave subjected to a consideration of the condition I was in, that I was under a strain worse than any third degree methods, which suffer the utmost condemnation by all our courts.

This man knew, and so did Mr. Jackson, the prosecutor that by forcing me on they would bring on this exhaustion of body and mind, and would gain an advantage for this record, and this referee's report proves this, for he has referred several times to the fact that I would not answer direct questions.

Look at that record, and you will find that I forgot, and even when reminded, could not remember, that I had read the most important of the Bogardus cases, the case of 4 Sandford Rep.; a case I have probably read at least a dozen times, and have turned to for reference a thousand times.

Knowing what I had suffered at the hands of this referee, before the hearings started October 16th, 1916, I presented an application to this court to remove this referee, a copy of which paper I append hereto and submit for the full consideration of the court.

Your Honorable body will take into consideration that this complaint is not made by a party who has ever paid me any money, as the records will show. The complaint is made by Trinity Corporation, which, I charge, sent this man to my place to trap me, and the record certainly bears out this charge. I state that there cannot be found one witness, or one of my clients, who could truthfully testify that I have ever had a dollar from them for the purpose of bringing a law suit; but that everyone who has retained me has done so voluntarily, and upon the form of retainer which is in evidence here, and when you read that retainer you will find that no one can get by that proposition; although your referee does try so very hard to gloss over any honest opinion of that retainer. It shows the true relationship existing between me and my clients, those who furnish the money to make this investigation.

Now as to the referee's report and opinion: He starts out with these words under Charge I (Fols. 8, 9)

> "As the most appropriate and useful way to, facilitate a full and intelligent review of the proceedings before me, I commence with a statement of the so-called Bogardus Farm history, including its location, acquisition by Trinity Church and the litigation concerning Trinity's title. Upon these point I found, after due examination, the brief of the learned counsel for the petitioner so correct that I have no hesitation in quoting largely from it."

Then follows a history of Trinity Church from 1697, and I would be thankful to have pointed out to me any history of the Bogardus Farm and its acquisition by Trinity Church; not even the briefest sort of history is given, but perhaps this should not be blamed on to this referee, as it was merely owing to the fact that the brief of the learned counsel for the petitioner, although it is so correct, did not have that description of the Bogardus Farm contained therein, or a history of its acquisition by Trinity. As regards this last feature I might add that it would hardly be possible for them to give you the true facts in regard to this; they would not dare to put in a brief the true acquisition by Trinity Church of the Bogardus Farm.

* * * * * * * * * *

This referee busies himself, with a large number of references as to what is contained in certain circulars, and then jumps into the air with his judicial assumption, presumption and conclusion, that I have solicited and taken money on the pretense that I was going to bring suit.

Look at the receipts offered in evidence by Brower, they distinctly state, see page 342, line 23 of the evidence:

> N. Y. City, November 24th, 1915. Received from Mr. Albert E. Brower Forty an no/100 Dollars; Re Jans investigation, and not for suit. ($40).
>
> W. T. GRIDLEY, Atty.

and so on, there are eight of these receipts, all worded the same, "re Jans investigation and not for suit."

Look at my testimony on pages following:

> "The respondent: I never solicited one single dollar, nor one single retainer from anyone."

See page 172, Mr. Brower's testimony:

> "Q. You intend to keep on paying money to Mr. Gridley? A. I do. I intend to investigate and find out whether we own it or the pirates."

You will please note, gentlemen, that Mr. Brower has said he intends to "investigate."

See again page 172, line 16:

> Q. Just one or two questions. You came and retained me yourself, did you not? A. I did. A.—(witness continuing) You did. I insisted upon you to take the money and investigate this from the bottom, from 1635."

Mr. Jackson subpoenaed this witness, and I did not know until he came into the room that he had been subpoenaed. Will you therefore believe this man, or will you believe Trinity's tools, this referee, and the prosecuting attorney as to whether I have promised a law suit, even to Mr. Brower, who is a British subject?

See page 175, and page 176:

> Q. How many times have I asked you to drop the matter because it was an impossibility to proceed with the work diligently? Haven't I asked you repeatedly to drop this matter?
>
> A. Yes, you have done so, but I told you what is the

good of starting a thing or putting a tunnel under a river without finishing it. If you don't finish it and only get halfway through, it is not a tunnel. I want to find out whether the Bogardus heirs own this land or the sharks."

Now, gentlemen, I submit these are intelligent answers, and would one suppose this man was not telling the truth? Is there any mention of a law suit here?

I say that this referee has no right to substitute judicial inferences and presumption for absolute proof, and he has absolutely no proof of what he says. I myself testified that I had never received a dollar for suit; Mr. Brower testified that I was investigating, and the tool Calligari (using those half-baked minutes) acknowledged that I said I was investigating and collecting proofs.

I take exception to this Referee making the statement that he has taken the testimony and evidence of the respondent in his defense. He has done nothing of the kind; for I was not given a ghost of a chance to put in a proper defense here; all the evidence that I did get in was usually admitted over storms of abuse from this referee, so much so that with the condition of my health my nerves went entirely to smash, and I submit that it is hard enough for a man to defend such charges when there is a foundation, but to defend them when they are brought on trumped up charges, and in the face of the most palpable sort of bias, is more than any man should be called upon to face.

What man is there among you who can state that when a man reaches the age of Judge Freedman, that he is capable of cool judgment? You have to take into consideration the different men you know of this age, and think what their capability would be of judging a matter of this kind. This referee did not understand or positively would not understand that I was not able to bear the strain of these hearings day after day in October, and despite my asking for a little time, he forced me on day after day, until I am quite sure that when I took the stand myself I was physically incapable of doing even the scantest kind of justice to this cause I represent and in which I am so keenly interested. I was absolutely a physical wreck with the strain. (Judge Freedman was about eighty-five years old.)

In the first place, for the trial of this matter I had prepared what I considered was a fair representation of the work I had been doing, and had intended to handle the examination of Trinity's witnesses accordingly; but in theory that might have been all right when it came to practice, all in the world this Referee and the prosecuting counsel did was to object and have the objection sustained. In fact, the minute Mr. Jackson got up and made an objection, the Referee would toddle right along after him like a helpless child being led by the hand.

Mr. Drake went on the stand and was allowed to give his conception of the law, and what this suit and the other suit was, and how it was brought, by whom, and for what object. But upon examination, when I sought to take him to task on his testimony and find out if he knew what he was talking about when he gave that conception of the case, I was met with objections. "The cases would speak for themselves; that it was in the books, and we do not have to go into the law." I was told to stop that line of examination of the referee would take the witness off the stand, and he did.

I submit that as long as Drake was allowed to give his conjectures, I should have a chance to probe his knowledge, and bring out the points which were relevant to the issues here.

It would be strange, would it not, if things had come to such a pass that because a decision was made of such and such a matter at such and such a time, an attorney is precluded from ever raising a question in regard thereto. If we all want to be honest with the world and ourselves, we must all admit that it is the errors we make that make for our efficiency, and that our clients are the ones who pay for those mistakes; who pay the bill of expense, and who suffer for those mistakes. I notice that the fact that I have said that I was unfamiliar with anything in regard to this matter until it was brought into my office, seems to be treated with a great deal of incredulity. Well, there are people outside of this city who have not heard of Trinity Corporation, and will this court hold then that an attorney who is wholly unfamiliar with this matter could not honestly accept a retainer and investigate it, and find out what the facts are. Would he be precluded if he honestly read these cases and classed them up against well known historical facts, from reaching the conclusion that there was "something rotten in Denmark?"

If you go through this testimony, you will find there is not one scintilla of evidence that I have obtained a dollar of money, except for one purpose, to wit: to investigate and collect the proofs; that I contend is the inalienable right of any man who is interested in this matter. If this were not so, what right have our title companies to take money for the investigation of titles? Any historical society which is willing to spend the money to get the true facts together, have a perfect right to employ an attorney or agent to do this work for them. Take this report and tell me, weigh it with the evidence, on which it is founded supposedly, and is it not a mass of malicious false presumption, deductions and inferences, conclusions on the part of this referee, certainly not borne out by the evidence, but probably as he states in the first of Charge 1, founded upon the brief of the learned counsel for the petitioner, which is so correct that he has no hesitation in quoting largely from it.

It was not for me to break our laws, and disclose the work done for clients, in no way a part of these proceedings, although that seems to have been one of the bones of contention, which both the Referee and prosecuting attorney made very much of. They make great objections that I did not state or disclose what I had been doing, giving as their reason for wanting me so to do, that in answer to these charges that was my duty. I do not think so. Naturally they would raise an objection because I did not define my position more clearly, that I did not better serve the purposes for which I was sat in that chair, and that was that they should find out just what I had done, was doing and intended to do. That is why they felt so keenly the fact that I did not state what was the proof I had discovered after 200 years; they thought they had missed something. A pretty note for the Bar Association to allow itself to be used to intrude into the relationship between attorneys and clients, without all the clients waiving that privilege in open court.

Washburn testified without his client waiving the statutory privilege. This the Bar Association was again a party to; this the court permitted.

Would this court or the Bar Association, bring this attorney to account for so doing?

Apropos of this, I might add, that a great deal of noise has been raised because of the fact that I served this man Washburn in a libel suit while he was here testifying in these proceedings. I want this court to understand that in so doing I was fully cognizant of the fact that under ordinary circumstances this would have been unprofessional. But this man is not in that position; he is a member of the New York Bar, he has an office address here, and he told

me himself that he was here every month or so to transact business. Had I a right under these circumstances to suppose that he was here the same as he was at all other times for the purpose of transacting other business? I saw him frequently after out first meeting, and have seen him several times since he testified at these proceedings, but I have not been able to get close enough to him to serve him. If you will look at the man's testimony you will find it bears out my statements as to his presence in New York (pp. 219, 252).

Again, both the referee and the prosecuting attorney want to have this court believe that I contemplated suing this man for a report which I made him produce; this is not true, and Mr. Jackson knows that I drew from my pocket a copy of this report that he had made to his client, Andrews. Jackson knew from the questions I asked Washburn that he had made that report to his client public property, which was a libelous report about me, and he had sent it to whoever he had a mind to; for I had received it from a client who had received it from a person to whom Mr. Washburn sent it.

Notice, I am to be held to account for what my clients did with the letters and reports which I send to them, but do you find them considering this man, an attorney, who did not care what he did with his client's business, as having broken the pledge between attorney and client. He produced no waiver by his client in court, and his client did not come into court and waive the privilege.

To show you how closely John N. Drake, Trinity's representative, was to this man, I want to tell you that Drake went straight to the people whose names this man Washburn furnished him; but as I have said, all the fruits of Drake's labor was the word of this luscious peach, Washburn, but neither a Wash nor a Burn could obliterate this lying tongue.

Apropos of what this referee states that the circularizing was done by Mr. Brower, Mrs. Buys and others, to obtain funds for this work, I want to ask has a client a right to borrow money, or solicit aid, to carry on an investigation of any matter he has a mind to? Is there anything wrong in his so doing? So long as in taking that money he makes no false representations or promises of return or reward for such financial assistance, and if he has that right, is the attorney responsible for what that client does. Do not our historical societies solicit funds through the mails for this very work, and have they not done so years and years? Has the Government ever sought to prosecute them for so doing?

Will the fact that this and former generations have shut their eyes to the theft of this farm by Trinity, bar future generations from proving a continuation of this fraud and moral transgression against its own religious tenets? Certainly the moral question is more potential and important and one that must concern the State as the guardian of the morals of our citizens and the welfare of our people.

It is true that I have sent out reports, but to clients alone, stating that in my opinion Trinity got the Jans Bogardus Farm without paying compensation for it, and by the use of fire, force and bribery. But all this is borne out by history, the Documentary History of the State of New York, and is contained in the Humbert case in 24 Wend.; therefore it is not a product of my imagination, as the referee's report would have you think. Is there any man who is interested enough to go back over the history of our state from the beginning to prove what I have said? Take Wilson's History of New York, Old New York, published by Putnam; Valentine's History of New York, and many and various other books, and they all give a history of the struggle by Trinity to get possession of the King's Farm. But can you find anywhere a legal excuse for the taking by this Church of God that which belonged to its neighbor? Then if Christ were to return at this day, do you not think he would say as in the olden days when he cast the money lenders out of the temple, "My house shall be called a house of prayer, but ye have made it a den of thieves?"

Churches are to be judged by the law of God. In our courts of law, it is said, even at the present day, our lives, our liberties, our fortunes, depend upon a system of oaths, oaths founded upon a religious belief of some sort; there is a degree of consciousness in all of us that there is a Power above who will reward our virtues and punish our vices; that falsehood or perjury will be punished either in this world or the next. Hence then, the church, religion, reverence for the Almighty God, is the cornerstone of our national being, and upon the teaching of churches and religious institutions, depends the happiness, security and welfare of our citizens.

Then, gentlemen, a church which is not the living example of the doctrines taught therein, strikes at our national existence and is an enemy to society. We must have as a nation true, real, honest religion, not a commercial religion, not a religion of high finance, not a pretense, but the good old rock bottom Billy Sunday belief in God Almighty and His teachings, and it becomes the duty of every man who loves this country, this great republic, and who would, as did his forefathers, sacrifice both life, liberty and blood in behalf of this glorious country of ours to battle with all his might against any force or power who would seek to destroy this fountain spring of our national existence.

To illustrate, the fountain head of our country, our President, as he steps forward to take up the reins of this great government, is called upon to take an oath before his Maker to fulfill the duties to which he is elected. Our senators, our governors, our mayors, aye, even you gentlemen, start out upon your duties with that solemn oath upon your lips to do your duty to God and man. Has there yet been found a substitute for that solemn ceremony, therefore, can there be any question in your minds that religion is the very vitals of our country's honor and government? It is the stepping stone, the footstool, the open portal, the sacred rite of all our national offices, and I say to you that a church who outrages the doctrines of its own religion is a blot upon our national escutcheon. Therefore, as you would judge your ruler should he defile his oath of office, as you would judge your public men, who disregard their sacred oath to be true and faithful servants of the people, as you would judge one of yourselves who would outrage the dignity of his profession, so must you more mercilessly judge this church, this religious institution, the sole agency of God upon earth; this church which by the resolution of its vestry has loaned itself to the despicable scheme of bringing before you gentlemen an attorney who has sought to bring her to account, not by lawsuit but before the big court of public opinion, for her sin of covetousness.

Why should we maintain armies, navies, courts and their like, if we allow the waters of justice to become and remain polluted by the influence of moneyed powers, who seek not alone to destroy our laws as laid down, but to make others to fit their own situations, likely working on the theory that the man with the money and power is entitled to have his laws made commensurate with the

amount of that money and power and his doings in the world at large.

Since the adoption by the government of that sacred oath, upon that sacred book, has not the State or the Commonwealth had control of the teachers of that oath, our churches and religious institutions, and as it controls the morals of the mothers and fathers, of the teachers in our schools, why should it permit in our midst a corrupt religious organization such as this is, and can anyone deny the police power of the State to regulate institutions of this kind, and deal with them as to any moral issue?

* * * * * * * * * * *

In folio 55 of his report, this referee has stated that Mrs. Wright admits that some of the circular letters were Mr. Gridley's. But this is a falsehood. Mrs. Wright did not say anything of the kind. What she did say in substance was (see page 423) that it was her habit in sending letters to clients to put in the envelope carbon copies of letters sent to other clients, not circulars; that this was the manner in which she had received instructions from Mrs. Buys and Mr. Brower to have some of these letters printed and sent out. She specifically stated (see page 427) that these were letters "brought back" to her to have printed, and that I had had nothing to do with this part of her work. Her own daughter, Miss Betty Wright, testified to the same thing. The referee takes from her testimony (see referee's report, fol. 57) wherein she states what material she has used for the work Mr. Brower and Mrs. Buys gave her to do, and he (fol. 58) states, just what she testified to, that she got the material for the circulars which Mr. Brower paid her to have printed and sent out, from Mr. Brower and Mrs. Buys.

Now see to what use he puts her testimony at folio 60 (see her testimony, page 426) she was asked whether it was correct that the circular letters which she sent out contained material which was in Mr. Gridley's files, being part of the investigation work, as he called it, which he had been doing, and the answer was in the affirmative. Mrs. Wright's answer literally was: "A. The information contained therein, but I want you to understand —But here Mr. Jackson stopped the rest of Mrs. Wright's answer simply because he wanted to shut her up, and I interrupted him and said: "She has not testified to that. She said the letters were brought back" and the witness answered: "Brought back." Mr. Jackson accused me of prompting the witness but she had already testified to this fact previously, and it was mere repetition upon his part to ask the question. Repetition—a thing for which I was severely criticized.

With equally as studied an evasion of the truth, and a twisting of the evidence given upon the hearings, take the referee's statement at folio 55 in his opinion, wherein he states that Mrs. Wright admits that some of the circular letters were Mr. Gridley's. You will find that on page 414 Mrs. Wright distinctly states that she used as material for her circulars which she sent out, (particularly stating for Mrs. Buys and Mr. Brower), letters written to them, or which they received, and returned to her, or brought to her to have printed.

Mrs. Wright stated both in her affidavit, and to the referee at the hearings that it was customary in sending out letters to clients, (mind she was not speaking of circularizing), to enclose in them carbon copies of letters to other clients, and this was done in order to save repetition. Specializing at the bottom of the page, she was asked what a particular letter was, and she answered a report to clients. Particularly on page 415 she states again "That was sent to clients—was not a circular."

Although this referee has found time repeatedly to refer to other testimony, he has not referred you to Mrs. Wright's testimony where (Page 421) Mr. Jackson asked "they naturally were passed on by him (meaning respondent) before they went out, were they not? A. They were not." Q. So Mr. Gridley had no knowledge of them at all? A. No. sir." Q. He did not know the circulars were going out? A. No, he did not. Q. He did not know the contents of them? A. He did not know when, where or how or the contents of them." "Q. He knew nothing of them whatsoever? A. He knew nothing of them whatsoever." Q. Mrs. Wright, who prepared these circular letters? A. I did. Q. In all respects? A. In all respects, and some of Mr. Fonda's circulars too." And in the face of that he states that Mrs. Wright admitted that some of the circulars were Mr. Gridley's.

I submit again that in speaking of this matter distinction should be made between the work Mrs Wright was doing for me, and incidentally for my clients, and the work she was doing at the instigation of Mrs. Buys and Mr. Brower.

Note Mr. Brower's testimony, page 173: "I hired Mrs. Wright to circularize and I paid her a good deal; I owe her some now." Therefore, in speaking of sending out letters, this referee well knew that the witness then (Mrs. Wright) referred to letters to clients and not circulars.

I claim no one could question my right to write letters to clients, neither could those letters by any process of reasoning be objectionable because they asked for money to support the work I was doing so long as those letters were going to clients and to those alone. What my clients did with my reports after they received them has nothing whatsoever to do with me, and I call the court's attention to the fact that I pointed out to this referee that on the back of every communication to my clients I have printed conditions; that clients would be bound to read them, for on the bottom of each letter is written "Read other side." Part of those conditions read as follows:

> "Clients must assume sole responsibility for financing said investigation, as in all business undertakings. Clients must accept the risk as a business venture, and recognize that attorney can proceed only as fast as finances justify; that whatever clients do to enlist public support or interest must be on their own responsibility. All funds furnished said attorney, must be contributed voluntarily, without promise of return or reward, and entirely without regard to anything written, said or done by said attorney. * * *
>
> "Attorney has not and will not, under any circumstances, authorize anyone to represent him in this matter by word, act or deed, and shall not be held responsible for or required to delegate any authority to anyone to publish or circulate printed or other matter, but that any such heretofore or hereafter sent out, or received, is solely upon the sender's responsibility. That only letters or communications bearing said attorney's personal script signature shall be regarded as coming from him."

It would seem to me to be an unheard of thing for this Referee, or the Bar Association to interfere in the relationship of attorney and client, unless some complaint was brought by the client, or if there were more than one client by at least one of the clients.

At folio 56 he seems to object because Mrs. Wright upon being asked if money was sent as a result of her circularizing she stated "I could not say that." I submit in all fairness do you think that in a matter of this kind money could be traced as a result of any one thing in par-

ticular. I proved upon the trial that I was flooded with letters at times making inquiry, and that I answered them all the same way that I communicated only with clients; so that if Mrs. Wright, Mrs. Buys and Mr. Brower did circularize it availed them little for I did not, and have not corresponded with people who had not retained me.

Now you will note that at folio 58 Mrs. Wright particularly stated how she got the material for one letter; that in sending out a letter to a client a certain carbon copy of a letter had been included and it was brought to her to have printed, and she acknowledges she enclosed it in the first place. Now note that the Referee again states: "finally she was asked whether it was correct that the circular letters which she sent out contained material which was in Mr. Gridley's files, being part of the investigation work, as he called it, which he had been doing, and the answer was in the affirmative." This is false. Take p. 426 see where she had started to answer the question and Jackson butted in and said that was all she need to answer. Mrs. Wright had already answered that question and said it was material brought back to her, but even though it was repetition, and in this connection respondent wishes to state that you will perceive by the testimony that he was frequently admonished that the witness would be taken off the stand if he repeated a question, or asked the same question phrased in a different way, as I say even though it was repetition, Mr. Jackson got away with it, but she answered material brought back to her, and she meant as her testimony shows, by Mrs. Buys, or Mr. Brower as the case may be.

Now to get back to the retainer, the Referee stated that at the bottom of the retainer form is a place for the addition of new names of other prospective clients; that it is absurd, in view of this latter fact, for me to contend that I was in no way concerned with the circularizing work. The absurd part of the matter is, that he might have given respondent the benefit of the doubt; that would have been absurd, and most unlikely too.

In point of fact that space is put there purely for genealogical purposes; but this point might not have been taken into consideration by either the Referee or his equally correct prosecuting attorney. The genealogical part of the work is very important, and is a part of the work each client retains me to do for them. These spaces are put in there for them to put in the names of their relatives and clients well understand that. If this Referee or the others interested in the prosecution can bring out one instance where this space has been used for any other purpose I would be almightily glad to have them do so, so sure am I of what I, myself, and my clients consider that space to be for. In fact there are very few of the people who are interested in this matter, who do not consider their genealogy the most important part of the retainer. Would you consider this odd? What man is there among us who is not rather proud of his family tree?

Now at folio 64 of the Referee's opinion he states "Understanding of the nature of Mr. Gridley's work which the client recites at the outset of the retainer he is possessed of could only have been based on the receipt of circulars as Mr. Gridley confesses that there were many clients whom he had never met." Have you ever read a more preposterous statement that this. That because clients had never met me the knowledge they possessed of this matter must have come from circulars. I will answer the last first, and the first last. Has any gentlemen here ever had a client he had not met. Have you ever done work for clients in other Cities, and never come in contact with them. Have you ever asked that client for money through the mail? Would you consider yourself guilty of some heinous offense if you had?

Now as to the fact that they did not have an understanding of my work, or that they were not possessed of the facts I would like to ask one question "Would you consider it necessary to go down south and preach or circularize in order to create a hatred against the north. Do you think the feeling between the north and south will ever die? Is it not as keen today among the old southern families as it was in the days of the civil war? Could you by any process of obliteration stamp out the feelings left in every true southern heart over the civil war? Then gentlemen when you have answered that question, you have the answer to this whole proposition, you don't have to circularize these people, and I do not know why Mrs. Buys or Mr. Brower wanted it done, for certain it is that the feeling among these people, against Trinity Corporation, will never die, and it is as keen in their minds today as it was in the breast of Cornelius Bogardus so many years ago when he was petitioning the Government for the burning of his fences; it is handed down as is the feud of the Tennessee Mountaineers from father to son and from father to son, until the day of justification dawns. You have a fair example of that hatred in Mr. Brower, read his testimony, and then state do you think I was circularizing Mr. Brower, who stated that he had been interested in the matter over thirty-five years; then I was ten years old then when he started.

Mr. Brower is as keenly against Trinity Corporation as they are against me and that is saying a good deal according to the manner in which I have been treated.

John N. Drake found out what the feeling was against Trinity when he went out west to find witnesses against me, and returned with Washburn. It is instilled in the minds of ten-year-olds of those at present interested in the work, as it was instilled in their minds by their fathers and mothers long before I was born, and I want to ask you if anyone had deprived your mother of her home, of her birthright, had taken away the place you called home, and where you first saw the light of day, would you fight, and if you failed would it cure you of any desire to fight back again? Would you lie down on your oars or would you keep on, keep on, passing it down from generation to generation, murmuring and murmuring, getting louder and louder until it reached the doors of the despoiler in one great shout of "We want justice." They speak of effort after effort by these people to regain their birthright, which is true, but that very evidence gentlemen should make you pause and consider, if there was no right or truth on the side of these people then why such persistency after two hundred years. There have been many efforts and so many failures, and they know of those failures; for ask John N. Drake and he will tell you he has made many trips carrying the books with him and pointing out to these people where this and that decision has been rendered against them. Why is it that Trinity cannot down the children's children of that neighbor from whom she took this property? Because the truth will not down, and these people will never rest content until these facts are known from shore to shore, and to the uttermost ends of the earth, and the hatred and exposure will continue against Trinity until she is cleansed from all unrighteousness, and whose duty is that, gentlemen, it is the duty of every public spirited citizen who has any care for the welfare, the spiritual welfare of our community. It is the duty of every mother's son of us to cast out the pharisee with its prayer of "Oh God I thank Thee I am not as other men are" from our midst, and bring

Trinity to plead with God as did the poor republican of old "God be merciful to me a sinner." It is the duty of every citizen to put an end to the acquisition of property and money in any such fashion, and to help in a sincere and honest attempt to have restitution made to those who have been wronged. It was said by one of our great writers: That the supreme function of the Church was to inspire—if she failed to inspire the Church would wither and perish. The Church is the governor on our social engine, and it is supposed to impose a restraint upon the lawless. Then what of Trinity?

Without this merging of the two properties how could they ever claim in the years to come that the Queen Anne grant covered the Bogardus farm? They dug that rut, but how? Where do we find any legal proof to justify this? See the English authorities on the question of whether a King can grant that which he does not possess; that where office found is necessary for the subject so it is for the King. True it is that either an asinine mistake was made by the Bogardus attorney, or else this was a friendly law suit, and as I have stated repeatedly, so many things in this case point out that that is just what it was a friendly law suit. Look at the evidence produced upon these very hearings as to the location of the King's Farm, the old map rung from Trinity's own archives, made by one of the old City Surveyors in 1755, showing that the King's Farm reached to the palisades, which according to their own map were between Warren and Chambers Streets. Then under the English law which governed, or the Common law, how, in the face of the prior grant to the Bogardus heirs can Trinity claim she has even a color of title to this property, and was there ever a proposition more clearly defined or more uniformly recognized during the English authority than that a trespasser could never support the statute of limitations, or adverse possession. Therefore until Trinity can show that she had a color of title during the entire British period to the Bogardus Farm, she is a mere trespasser at best.

The assumption by this Referee, merely because he followed in the footsteps of the Vice-Chancellor in the 4 Sandford case, and perhaps the learned and correct prosecuting counsel, that there was a color of title is without foundation, and with the excerpts from the different histories given before, we are bound to reach the conclusion that Trinity Corporation never had color of title to the Bogardus property, and never had adverse possession during the Colonial period.

I enter a protest against the Referee's opinion, folio 84, "The statement in this circular, and Mr. Gridley's testimony as here shown should be borne in mind when the character of Mr. Gridley's investigation and the extent of the ground which he has covered are hereinafter discussed. I ask your Honorable Body how could the character of my investigation be discussed, and the extent of the ground which I have covered be a subject for discussion when nowhere in the evidence will you find that I was asked a single question as to the extent of my investigation, and if the question had been asked of me, do you consider that it would have been a proper one without my clients coming into court and waiving their privilege; and that I can tell you they will not do. Therefore I say such statements are all of a piece with the general trend of this opinion; he had eyes but he saw not; ears and he heard not. Again I say that the heirs of this illustrious lady, or anyone else interested in this even from a purely historical point of view, have a perfect right to find out whether their inalienable rights have ever been safeguarded or taken care of; to find out whether this famous 4 Sandford case, or any of the other cases for that matter, were founded upon an honest and fair presentation of the proofs and facts, which I claim and contend is not the case, so far as the cases cited show. I contend that the common law cases in this state bear me out on the proposition that a trespasser can never start the statute of limitations running, and if that is the case, every case tried upon the theory that Trinity obtained possession of this property by adverse possession alone, must be considered as part and parcel of procured justice. We all know that under the claim of adverse possession the title remains in the true and rightful owner, but that his right of action or remedy alone is affected. Even the Referee acknowledges this for he says at folio 18

> "acquired a perfect title to the premises covered by the grant, as against the rightful owner."

It would seem that with the many and conflicting and miscalculating descriptions of the location of the Bogardus property, it would be highly proper, whether a man was an heir or not, but merely as above stated from an historical standpoint, to use the public archives of this State for what they are intended to be used, and, if you please, look with some degree of certainty, inasmuch as the courts cannot seem to agree as to where these properties were located. Then, may I ask, am I to be disbarred because there are those who want to know and who are willing to undertake that task, and would it be unprofessional to undertake this work? If the Referee is not inclined to believe me, and questions my veracity, do you not think it would have been well for the petitioner's witness John N. Drake to have read the Bogardus case, which he stated he was so familiar with, to find out where the Vice-Chancellor located this property, before testifying under oath? Mr. John N. Drake states pages 11 and 12 of the testimony:

> "It is generally bounded by Fulton Street on the South, the Hudson River on the West, Christopher Street on the North and Broadway on the East from Fulton Street to a point a little above Duane Street, and then following the generally westerly and afterwards northerly direction to Christopher Street."

In the 4 Sandford case the Vice-Chancellor said at page 720, in his attempt to locate this property:

> "This part said to contain 62 acres extended from a line about one hundred feet south of what is now Warren Street, northwardly to what is now known as Christopher Street, and from the Hudson River on the west to what is now Broadway at its south line, and along the line of Broadway, nearly to Duane Street, and from thence its eastern boundary ran northwestwardly, gradually approaching the river at its northern extremity.

Now let us see what the opinion states as regards the boundaries of the two farms, the Bogardus and King's Farm: Humbert vs. Trinity Church, 24 Wend. at page 598:

> "But it is said the defendants had already formed the intention to possess themselves of the Bogardus lands as being part of the Duke's Farm and had introduced the ambiguity in order to subserve that intention.
>
> Not being definitely limited on the North, this circumstance opened the door for pretending that their grant of the Duke's Farm comprehended the Bogardus lands; and it was for the fraudulent purpose of following out such pretention by actual encroachments that they had sought to procure the equivocal grant."

Now note that the Court states in this case at page 596 the following:

"By demurring the defendants have admitted all the material facts stated in the bill, and all the legitimate conclusions of law deducible from those facts."

Therefore, it is a question of fact as to what was the true northern boundary of the King's Farm, and what was the true Southern boundary of the Bogardus Farm, and whether the palisades were or were not the dividing line.

Please note the descriptions in the grants given by Petrus Stuyvesant in 1654 the then Dutch Governor, and Richard Nicolls, Esq., in the year 1667, the then English Governor:

> First: Beginning at the palisades near the house at the river side and running north by east to the division line of old Jans Land 210 rods from thence along the said division line, east by south to the swamp, thence southwest 160 rods from the swamp to the river side extending west in breadth 50 rods the land which lays south of the house and east of the division line of the Company's land, begins at the palisades and runs south to the post and rail fence of the company's land etc. etc. etc."
>
> Second: Did then begin from the fence of the house by the strand side, so running north east to the fence of Old Jans Land its in length 210 rod then going along the fence of the said Old Jans land south east it reacheth to a certain swamp and is in breadth one hundred rod and striking along ye swamp southwest its in length 160 rod and from the swamp to the strand going west its in breadth 50 rods the land lying on the south side of the house to ye fence of the land belonging to the Company, and so to the east side begins at the fence and goes south to the posts and rails of the Company's land without any hindrance of the path etc. etc."

Now, gentlemen, there was produced upon the hearings a map, a copy of which is in Valentine's history, which copy states that the original is in the possession of Trinity Church, and by this very map it appears that the northern boundary of the King's Farm was the palisades which were located between Warren and Chambers Streets. This is a question of fact, let the law be what it may.

Gentlemen, taking everyone of these cases which are so continually cited by those interested on the opposite side of this matter, you will not find one word contained therein which will show where the Bogardus legally transferred their title to this farm, neither will you find a scintilla of excuse for merging the Bogardus Farm into the King's Farm, legally or otherwise. It is simply merged and that is all there is to it, and the adverse possession tacked on.

You will find in the 4 Sandford case their witnesses testifying to the fact that there were but a few houses on Chambers Street, see page 666: the witness

> "did not remember any more enclosures or buildings on the land lying north of Warren Street, **as far as the map extends.**

Is this the Francis Maerschalk map, the original of which is in the possession of Trinity Church which brings the King's Farm to the Pallisades and stops there for the northern boundary of it? And at the Pallisades their color of title stopped, so far as their Queen Anne grant has given them any foundation for possession of any property.

Have not the courts held that where one asserts color of title by instrument that possession only extends to the land actually possessed; that where one by mistake or inadvertence enters upon a tract of land different from that described in the instrument under which he claims, there will be no constructive possession created; that whatever adverse possession such claimant may have is limited to his actual possession (See American & Eng. Enc. Vol II, page 539.) Then according to Trinity's own witnesses in the 4 Sandford case, actual possession had not gone beyond Chambers Street, or any farther than the map extends.

Again, in considering this matter, do you think this Referee, or the wonderfully correct counsel for the prosecution took into account the fact that there are cases, even in this state, which show that the court has a right to correct a mistake as to boundaries, if it can be shown that there was a mistake, or that there was a fraud in the procurement of the judgment? There is not the slightest doubt but what Trinity claims the property she is holding under and by virtue of the Queen Anne grant, that that is her color of title by instrument, then, according to law it can only extend to actual possession.

Whatever adverse possession such claimant may have is limited to actual possession, and that actual possession if we are to believe their own witnesses does not, or rather did not go beyond Warren Street, for they all agree that there were no enclosures further north.

Note the testimony of Adolphus Loss (1842) he tells that he was employed by Trinity Church in 1799 to survey and lay out the lands called the Church Farm; that they had difficulty in defining the easterly boundary but that Mr. Barrow then collector of the church rents directed them and assisted them in finding it. He then goes on to give a description of what he considered was the church property and states it was then, and is yet generally understood, reported and considered to compose the estate of the corporation of Trinity Church, commonly called the Church Farm, and this is the gist of the legal proof presented, gentlemen, in all these cases that Trinity Church came into possession of the Bogardus Farm under the Queen Anne grant, and this is what we are to take for the legal proof of the passing out of the title to the lands granted to Anneke Jans Bogardus, and afterwards confirmed unto her children by the British Crown.

What was done by Trinity is one thing, but what they could do with respect to the rights of others is a vastly different matter as history shows. At least those interested in the proposition should have the right to satisfy their own conscience, and pay an attorney to do the work for him, if he wants to, in order that he might read, mark and learn and we might add with great fervor, inwardly digest, for verily he must not speak his thoughts or his findings even in his letters to his clients.

Again in this Referee's report he states at folio 65, that certain literature was sent to Mr. Marshall of Auburn, Kings County, State of Washington. In the first place there was no possible proof given that I mailed any literature at all to Mr. Marshall, other than this man sent certain matter to Mr. Walker the assistant U. S. District Attorney, stating that it came from me. I could not state what part of that matter came from my office, but this I can state positively, and I did so state under oath, in that envelope was a copy of a night letter, and I again take oath that I never sent that man a telegram in my life. As far as writing to Mr. Marshall is concerned, he was a client of mine, he had retained me in writing before I ever communicated with him, and he received the same letter everyone else who has sought to retain me has received, stating fully my position in regard to this work, what my attitude is, and what they must understand the work really is, be-

fore I accepted that retainer. Strange it is not that when Drake went west to find this man Marshall and bring him on, he found upon inquiry that Mr. Marshall had already been notified he was on the way, and was gone, leaving his wife to the mercy of her friends, and nothing would have pleased me better, or my clients in the west than for Drake to have been able to find him and bring him on here, I think we would have uncovered another of Trinity's dastardly tricks to block this work; for now I think that man retained me for nothing else in the world but as a tool for Trinity.

Now at folio 69 this Referee states that "In order to assure myself of further protection, I have asked that all envelopes which my clients received from me be opened with a knife and then returned to me; thus evidently seeking to get into my own possession the first hand evidence that the mails had been used in the distribution of my 'reports to clients.'" Now did you ever hear of such a piece of impertinent assumption and presumption; how could anyone with any sensibility of justice take such a meaning out of what was being done. In point of fact I had received many letters from my clients which had been opened, and some which showed evidences of having been steamed open. This led me to believe that the mail was being tampered, and I did not put it beyond Trinity to do so, if it could accomplish it. I therefore wrote to my clients to be on the watch for spies, and to be careful to open their envelopes at one end with a knife, and to return them to me endorsing thereon the date and hour they received such envelope. Now, gentlemen, do you believe that with the faith my clients have in me it would have been a difficult matter for me, if my object was to get those envelopes in my hands as the first hand evidence that I had used the mails, to get my clients to return them to me just as they were. Why did I tell them to be cautious with them, and state just when they were received. Why plain logic will tell you it was for nothing else in the world but that I would know how long they had been in transit, and if they opened them carefully any marks of steaming or tampering would show. As I have stated I have received letters which have been opened and not at the point of sealing, literally opened, and I was determined to find out whether these people could use the United States Government in any such fashion. Had this been asked of me on the stand I should have so stated, and I made this very statement in regard to my mail in a letter which I wrote to the Postmaster General.

Now as to folio 70 in which this Referee refers to the letter written to Mrs. Buys, you will find that during my examination on the stand Mrs. Wright explained just how that letter came to be written to Mrs. Buys. It was copied from a letter written to Mr. Brower. Mrs. Buys asked Mrs. Wright for it, and she took it and copied it literally, never thinking of the ending to that letter having reference to Mr. Brower's status to this matter alone, and could not apply to Mrs. Buys, Mr. Brower being a British subject. I testified myself that it was a letter I had written to Mr. Brower, and if you will take into consideration the fact that Mr. Brower is a British subject, you will know what the ending of that letter means. The Referee states that it is well to call attention to the date because I state that it was really not until August, 1914, that I commenced work in connection with this matter. What I said was that it was not until August, 1914, that I consented to accept retainers generally. I did not state that I was not working for Mr. Brower, or that Mr. Brower was not my client from the time when he decided to take up the work of the investigations directly with me. I am almost positive that this was understood, for there could have been no other construction placed upon my testimony. Mr. Brower, from the time he came directly to me, had been kinder to me than a brother would have been through the summer of 1913, when I was very very ill; I was still very ill when the trial of Mr. Fonda came up, and all that winter and the following summer, therefore I could not have done very much work in this matter, my health would not permit it.

The referee states that I gave several reasons for defending Mr. Fonda — a man can have several reasons for doing a thing, but in those reasons you will find they do not conflict with one another. I stated, and I state again now, I did not at first intend to defend Fonda, and did so after a very careful consideration of all the reasons why I should or should not.

* * * * * * * * * *

As to any of my statements that Trinity is no better than a thief, my characterization of her moral transgression — her hypocrisy — do I stand alone in this? Where is the Historian Smith, Wilson, Valentine, or the man who compiled the Documentary History of the State of New York, were they ever hauled through humiliating charges like these? How about the Senator of the West who came on here and went through the property held by Trinity and wrote up an article calling her to account for the condition of her tenements, the filth, etc., abounding there. Did they bring him up on charges, or sue the paper for libel which published the article. What about Mr. Russell, who wrote the article for Harpers? What about the article in the Evening World of April 25th, 1873? With the exception of the Senator, one and all of these historians and the paper have accused Trinity of being on property which she did not own.

This Referee stated that I wrote to Mr. Marshall the U. S. District Attorney because I realized the dangerous character of the work I was doing. I want to state, gentlemen, this is an absolute untruth. My reason for going to Marshall, and I am sure Mr. Marshall understood why, was because of the anonymous letter which I had received, and which I have since learned was sent to me by Mrs. Calligari, and Mr. Marshall at that visit asked me to put in writing what I had said at that interview, and I did so.

I had been to the United States District Attorney's office long before I went to see Mr. Marshall. I went to see the Assistant U. S. District Attorney Walker because the tool Calligari had used his name to me over the telephone. (This is borne out by the shorthand notes of such telephone conversation produced upon the hearing.)

As far as Mr. Walker stating or anyone else that the Charter of Trinity Church being a grant from the English Crown preceding the Revolution, that it was not subject to revocation or amendment by the New York legislature, I discussed this matter with Walker, but he was not honest enough to give the conversation, and I stated to him, and I state the same thing now, that if the Dartmouth College case protects Trinity Corporation, how much more must it protect the Bogardus property, for their grant is from the English Crown and antedates Trinity's by thirty-five years.

* * * * * * * * * *

As to item "b" it is simply preposterous. He knows that the evidence produced at the trial distinctly stated that I refused to have anything to do with it, and Respondent's Exhibits MM, NN, OO (erroneously marked by the stenographer as letters from respondent's clients — for they are not my clients) are copies of letters which were sent out in all cases to people who would write to me for information as to this matter, and ask me what my

charges were. I always stated the same thing I did not correspond except with clients, and those who did retain me did so voluntarily and through information obtained elsewhere than from me. And the Referee would have you think that that would be impossible. That you would have to awaken interest in this matter. Well, read Mr. Brower's testimony, see for yourselves why he sent out letters, do you think after reading it that this man would stand baffled by anything Trinity might do? Do you think Trinity could stop his interest in this until he knows and is sure how the Bogardus Farm passed into her hands? Of course he knows it passed there; they all know that, but what they are interested in is how it got there, and how they have been able to make of that taking—that moral transgression the possession they have at this day. Do you think anything but the cleansing of this temple would satisfy a man like Brower. Do you know that when Drake was on the stand and spoke of the fact that these efforts were to rob the poor heirs he lifted his hands in Holy horror and said loud enough to be heard throughout that room: "My God! rob the poor heirs what have they been doing for years?" I want to add that this man's attitude and his testimony will show, that he will circularize and work for this cause, and do anything he has a mind to, to see justice done, and he has no fear whatsoever. This man has a heart as big as a mountain, and so long as he is on top of the earth he will circularize and work, and when he is silenced it will be when the voice of God calls him home, and then I am sure that for his deeds he shall have won a place at the right hand of the Almighty where his voice will still be raised in pleading for justice to his people.

As far as the Referee's opinion is concerned as to my connection with the circularizing if the evidence does not convince him, I can only say

> "you may as well plead with the wolf why he hath made the ewe bleat for the lamb; you may as well forbid the mountain pines to wag their high tops and to make no noise when they are fretted with the gusts of heaven"

that I may as well do anything most hard as to seek to try to open his eyes to the justice of my position.

As to the Referee's opinion of Mr. Washburn, please read Exhibit Q, letter to Mr. Marshall, dated August 24, 1915. Now mind this letter was written just after my interview with Mr. Washburn, and in this letter I particularly state that my reason for writing to him was the interview with Washburn. Now, gentlemen, in the face of this would you believe Washburn's testimony. Note this interview took place about the middle of August, and after these proceedings had started. I will add another feature to this matter which will show why I was suspicious of Washburn (please note Exhibit D, which the stenographer has erroneously stated is a letter to Washburn). I had a client in Spokane by the name of Mrs. M. E. Gorman, who shortly after she had retained me informed me that she had been or was a Pinkerton detective. I really believed she said it to put me on my guard. Later she wrote me a letter and said that this man E. O. Andrews was interested in the Edwards estate. Now gentlemen had I been looking for Mr. Washburn's client I would have written to Mr. Andrews then, but I did not, neither did I ask Mrs. Gorman to interest him, or ask him to write to me. Another feature which made me suspicious of Washburn and his client was — I made this engagement for another place, where I had the office so fixed that whatever they said there would have been witnessed to; but after waiting until past the time for the interview, I called them up and Washburn answered the phone, or at least he said it was, and said I would have to come down there. Curiosity — took me there. I left the office about 1:30, got to the hotel at 1:40 or thereabouts, and was back at the office between three and half past in the afternoon, for I walked down the street with the President of the company, and told him all about the interview; so that when the witness Washburn states that he spent four hours with me he lied, and if his word cannot be taken in one particular it surely cannot in any other. Further you will note by Exhibit D above referred to that I wrote to Mrs. Gorman that I had already formed opinions as to both Washburn and his client Andrews.

I had every reason to believe that the Washburn matter was a plant; the door to the next room stood partly open all the time I was there, and, gentlemen, I am still of the opinion that it was a plant, but that the record of my interview with Washburn could not have been used for the purpose Mr. Washburn was used for, for records will not lie.

When I asked Washburn if he sent that libelous report to anyone but Mr. Andrews — note what he states under oath:

> "Mr. Andrews asked me for seven or eight copies."
>
> Q. To whom other than Mr. Andrews did you send that Edwards report?
>
> A. I did not that I recall now."

Now turn to page 253:

> Q. What correspondence have you had with Mr. Drake, Mr. Walker or Mr. Candler's office, etc.
>
> A. None whatever, except with Mr. Drake, at his request I sent him a copy of this report."

But before he had testified that Mr. Andrews sent it out.

Now please note the testimony on page 238 in speaking of Walker he said that Walker had called me into his office. But Walker states he said nothing of the kind. Now please note page 249 of his testimony. In his report to his client he state "We proceeded to 170 Broadway, but found that he (meaning Gridley) had not been there for two years. Upon learning that Mr. Gridley was probably evading the Federal authorities and therefore could not be easily located" and then he was asked: "Q. Where did you learn that I was evading the Federal Authorities?" The answer was "I obtained that information from Rufus Sprague of the New York Bar." Now please turn to Mr. Sprague's testimony and remember that Mr. Washburn stated he had not sent that report of his client to anyone. He has already acknowledged sending it to Drake, (see page 687).

> "Q. Have you read Exhibit C.
>
> A. * * * * I have glanced through Ex. C and my present recollection is that I got a letter from Washburn about the end of August, 1915, in which the statements down to about * * * a page and a half here were contained, but I have no recollection of all this other detail, about his call on you, and the lapse of thirty-six years, * * * * and his seeing the United States District Attorney."

Now note what Mr. Jackson has to say, page 690 — It seems to me whether a copy of that report was sent to Mr. Sprague or whether it was not sent to Mr. Sprague is utterly immaterial." In the face of the fact that Washburn did not recall sending the report to anyone — do you think it was immaterial in order to prove his ability to tell the truth. But pass on to what Mr. Sprague answered when I asked him if he had made any such remark about

me to Mr. Washburn: "I have no knowledge whatever about you, Mr. Gridley * * * * * * and I think I would be very chary to make that remark about any man admitted to the bar." Now please note again Mr. Washburn's testimony, page 250, "One of the leading attorneys in the office of the U. S. District Attorney informed me that he was looking for Mr. Gridley, and had sometime ago called him to his office — further down the page, line 13 "Q. Is Mr. Walker the gentleman you refer to there? A. He is." Now note Mr. Walker's testimony, page 623. He states that Mr. Washburn stated that he had a client who had had some correspondence he thought with me and that Mr. Washburn's client was or claimed to be an heir of Anneke Jans. You will note Mr. Washburn's report states he was looking after the Edwards matter. Then please note that Mr. Walker goes on to give as nearly as he could recollect a long conversation as to the Anneke Jans matter, but not one mention of Edwards. Then this question was asked him, "Q. Did you tell him anything to the effect that you had sent for me to come into your office, etc.?" A. I don't think I said I sent for you, because that is not the fact. The fact is you came to my office voluntarily. There is no doubt about that." And in the next question and answer he denies saying that he told Washburn that I was evading the Federal authorities. So that from Mr. Sprague's testimony and the Walker testimony Washburn lied when he said he had been informed that I was evading the Federal authorities or that Mr. Walker had called me into his office.

Now referring again to the fact that I served Washburn after he got through testifying I will refer to his own testimony for proof of the fact that I had not the slightest excuse for thinking Mr. Washburn came here solely for the purpose of testifying upon this matter. (See page 247.) "I think to the best of my recollection I gave you * * * * * my downtown address," (See page 252.) "I usually come down every month or so." (See page 219.) "I might say I am also a member of the Bar of New York." It seems amusing, if there could be any amusing side to the fact that a man will lie, that he should have told his lie to such disadvantage to the other side. He states that I asked for a substantial fee for the purpose of publication, or for public opinion and (see page 259) the novelty of it was what impressed itself upon his memory. Pretty poor management this — you know I was procuring money for lawsuits according to Trinity's people not for the purpose of creating public opinion.

Now what do you think with these facts before you of the opinion of this referee as to Washburn's testimony — do you think it should be lauded?

* * * * * * * * * *

Do you wonder any longer why I am trying to get at the methods and means resorted to by Trinity Corporation to make of the taking of this property a legal taking under the Queen Anne grant? The signature of George Clarke is but one small part of the whole. It might in the Vice-Chancellor's opinion in the 4 Sandford case, matter not whether the grant was signed or not, but it would mean a great deal to the court if the signature was forged. It was for that reason that I asked for permission to see the grant, and was allowed to see it at the office of Trinity Corporation, and then upon the hearings I asked for permission to photograph the grant, and such permission was given by this referee, but when it came to me having that photograph taken, that was another thing entirely. I was not allowed to have it. I sent a photographer there, but he was denied.

Now as to folio 95 of the referee's report, "He also made certain intimations that British citizens were entitled to claim under the treaty between the United States and England of 1794" and then he goes on to say: "In any aspect of the case it would be difficult to perceive how the title to land of an individual or corporation which had become good against the world, could be abrogated by treaty. Moreover, in a ruling in 1885, Thomas F. Bayard, former Secretary of State, said of this treaty:

"The treaty of 1794 is held by the highest authorities to have actually lapsed by reason of the subsequent state of war in 1812-1815, and neither the Treaty of Ghent nor any treaty between the two countries since then re-enacted its provisions in whole or in part. But see Munro vs. Merchant, 28 N. Y. p. 9.

At page 34:

> By the Treaty of 1783 future confiscations were forbidden, and no person was to suffer loss on account of the part he had taken in the contest."

At page 39:

> The principal question discussed was, whether the treaty was not abrogated by the War of 1812, but counsel for the vendee urged the same argument which is insisted on as to lands in the United States, by the counsel for the defendant here, viz: that the consequences of the construction contended for would be that all the lands which at the date mentioned belonged to Americans 'are taken forever out of the operation of the general law of England, and may, in all time to come, be transmitted by aliens by descent, devise or conveyance' * * * * The master of the rolls held the title good. He said the privilege was given not only to the alien possessors of the lands, but to their heirs and assigns; that the treaty in this respect was permanent and not affected by the War of 1812. It thus appears that the superior courts of both nations have concurred in the doctrine upon which the plaintiff relies."

Page 39:

> The principle that alien heirs may take by inheritance from alien ancestors, who held lands under the protection of the treaty, has been repeatedly recognized in the courts of this State."

> Acts of the legislature authorize aliens to take and hold real estate, and public grants of lands to aliens have been repeatedly held to be descendible to alien heirs, contrary to the general rules of law: (Goodell v. Jackson, 20 Johns. 707; Jackson v. Etz, 5 Cow. 314; Jackson v. Lerney, Id. 397; Duke of Cumberland v. Graves, 7 N. Y. 305.)

See also "Treaty Making Power of the United States," Vol. II, Section 349:

> **THE RULE IN NEW YORK:** Alexander Hamilton was the first to recognize the sanctity of Federal Treaties and their supremacy to State laws. Staunch patriot as he was, he maintained even at the threatened loss of his popularity, the rights of certain British land owners in New York City, under the treaty against persons who claimed possession of houses in that city under state statutes. (Elizabeth Rutgers vs. Joshus

Waddington, Mayor's Court of the City of New York, August 7th, 1784.) For a full account of the passage of the New York Trespass Act and Alexander Hamilton's appearance and argument on behalf of the British claimants affected thereby, and his contention that the treaty protected the rights of his clients, see McMaster's History of the People of the United States, Vol. I, Chap. II, pp. 125 et seq. See also pamphlet of H. B. Dawson on same subject referred to by McMaster.

Judge Denio in the New York Court of Appeals upheld the treaty-making power of the United States; the action involved the construction of a treaty with Indians, but he stated that the rule was similar to that which applied to all other treaties entered into by the United States, to-wit: that it became a parcel of the paramount law and must prevail over all State laws. Continuing, he showed that the guarantees in the treaty were not limited to actions by the United States Government but extended equally to the acts or statutes of all the States and of citizens of the Union.

"This results," says the opinion, "from the nature of the treaty-making power and from the paramount authority which the Constitution attributes to Federal Treaties when it declares them to be the supreme law of the land. A treaty concluded by the President and Senate binds the nation in the aggregate and all its subordinate authorities and its citizens as individuals, to the observance of the stipulations contained in it. The principle has been asserted and established by repeated decisions of the Supreme Court of the United States. This (New York) State was, therefore, precluded from passing any laws which should disappoint or frustrate the guarantees afforded to the Seneca nations by the treaties to which I have referred. Any act of the legislature, the execution of which would dispossess the Indians of the reservations or any part of them, or which should materially disturb their occupancy, would, therefore, be illegal."

See also page 37:

"The rule had already been laid down by Judge Van Ness in 1809 that land in New York vested in alien subjects of Great Britain under the provisions of the treaty notwithstanding the anti-alien laws of the State.

See also Watson vs. Donnelly, N. Y. Sup. Ct. 1859, Allen, J.; 28 Barb. 653:

This was a question involving the right of a British subject to devise lands and of the devisees to dispose of the same.

The opinion goes into all of the cases in the Supreme Court, and of the effect of the statute of the State of New York, passed in 1825, as to the rights of aliens. In closing the opinion, the court says, pp. 660-661:

"The Court of Appeals held, that land conveyed to an alien pursuant to the provisions of that act might continue to be held by alien heirs and alien devisees of the grantee until by inheritance devise, or grant, the title came to a citizen. The plaintiff, an alien, claimed under a will of an alien, and his title, was held valid; and the word assigns in the act was the only word under which a devisee could claim. The opinion of Judge Ruggles is entirely applicable to, and decisive of the questions made under this branch of the case, as to the right of Mrs. Lynch to take as devisee and in turn to devise to her daughter. This being the effect of the treaty of 1794, and the right of alien owners to devise to aliens being guaranteed by it, the act of 1825 could not divest them of that right, or deprive the alien devisee of the right to take and hold the estate. The treaty is the paramount law of the land; and even if it were abrogated by the original contracting parties, the vested rights of citizens, under it, would remain.

Time and space forbid a reference to the many and unanimous holdings of the Supreme Court of the United States, and the courts of this State upholding and enforcing the treaty rights of British subjects under the Treaty of 1794, even long after the War of 1812. History records numerous adjustments of claims of British subjects under these treaties long after the War of 1812, which this referee would have us believe was abrogated by the War of 1812. Constitutional history, and the language of the Supreme Court of the United States as regards the force and effect of a treaty, and the bounden obligation of every state to respect these treaties, denying them the right to pass any law that would abrogate treaty rights, is a matter that the scantest of investigation on the part of this referee would have convinced him of the error of the doctrine that he seeks here to convey to the minds of his readers. Would it not seem, therefore, more in the nature of an absurdity that this man can give an erroneous opinion upon a question so well settled as the rights of aliens under the Treaty of 1794, and sit in judgment upon me and my acts. It is far from becoming in him to criticize any error of opinion, or to criticize me because I refused to accept as true the findings of fact as announced by the courts in the celebrated Bogardus case 4 Sandford or to accept the allegations so successfully demurred to in the various other cases?

This referee does not attempt anywhere in his opinion to touch upon the right of the Crown of England to abrogate and forfeit church charters. He nowhere attempts to deal with the question of the character of the title to lands held by churches under the British law. He nowhere attempts to deal with the fact that this grant to Trinity, if it was ever made, was to the Inhabitants of the City of New York, and not to them as a private corporation.

When we delve into the pages of American history for the purposes and aims of the great men who participated in the making and ratification of the Constitution, by which treaties were unqualifiedly made the supreme law of the land, and then analyze the various cases from time to time interpreting that document, have we not a right, even now, to expect that sometime, somewhere, the great aim of these illustrious men will be fully realized?

In speaking of relief by legislation at folio 99, this referee claims that because of the Dartmouth College case it has already been shown to be without foundation, and then goes on to state that I admitted that I had abandoned the idea of procuring legislation as simply fruitless. I do not think this referee has a right to assume that he knows my reason for abandoning the idea of legislation, for I did not give my reasons, and the burden was not upon me.

My reasons may have been political?

Again, when you come back to the fundamental proposi-

tion there is no corporation or individual who holds a piece of property in this State or in this country, for that matter, who is not subjected to the police power of the commonwealth. I say the burden was not upon me to show this referee how, or by what means legislation could affect this matter, and I challenge his right to conclude and speculate as to that, or my position in regard to the matter.

In this connection it might be well to call to mind a little of recent history as regards the power of the Government and State to deal with great financial interests, who boast of their power and impregnable position and always assume "you cannot touch me" attitude. What has happened? When it was found that the public demanded action, and public opinion insisted upon having it, we had it, with the result that one by one they have fallen into the scrap basket, and have arisen out of the ashes to yield to the power of the people, and I challenge the right of anyone in this free country of ours where we are a people governed by the people, and where the people make the constitution and laws, to say that this cesspool of religious sin cannot be banished from our midst, or at least cleansed from all unrighteousness.

While our constitutions have never defined vested rights, or contract rights, but have left that question to court interpretations, nevertheless the time may come when that instrument may put it beyond the power of any man to remain the possessor of fraudulently acquired properties. Who can challenge the right of the state, if forced by public conviction that a judicial fraud, by these various cases, had been perpetrated upon the children of this illustrious lady, if it felt morally obligated to legalize and adjust their claims, could not do so the same as did the Government of the United States, when they felt morally bound to restore to the Confederate Bondholders their moneys, notwithstanding the Supreme Court said that they had no legal rights in the matter. This may be legislation—but it may not be the kind of legislation that the referee judges the Dartmouth College case disposed of.

Now referring to the referee's report at folios 100 to 105, which in substance is the remarks of the court in the case of People v. Trinity, 22 N. Y. 44, and cites the same colonial references, which case was decided as late as 1860, I want to call the Court's attention to the close analysis the referee made on the question of title in this case. The question as to in whom the title rested—a question entirely distinct from the question of the right to relief or remedy upon the bill demurred to. Note on page 58 of this case where all the judges except Wells, J., concurred in this statement. I do not see how they dared to voice such an opinion after the decision in the 4 Sandford case, do you? They certainly must have taken a dreadful chance of losing their sheepskin in stating the following—

> "In regard to the presumption of title in favor of the people all the judges concurred except Wells, J., who dissented for reasons stated by him in another case.

But look what the dissenting judge said himself at page 58:

> "In an action by an individual, who should prove by competent evidence title in himself to the premises in question, at any time prior to the commencement of the action, and precisely such a possession in the defendant as was proved in this case, no one, I apprehend, would dispute the plaintiff's right to recover. The defendant, under such a state of evidence, would be put upon his defense, and unless he would be able to show a better title or establish a good adverse possession, or interpose some other legal impediment to the plaintiff's recovery, he must inevitably be defeated in the action."

So please note that the referee did not see all that was in this case reported in 22 New York; but perhaps this was because it was not contained in the very correct brief of the learned counsel for the prosecution. There is a great deal more which could be discussed in this case in 22 New York, but I contend that the affirmative is not upon me to prove my innocence. Before passing, however, I ask this Court, did Trinity Church get title to the Bogardus Tract by her so-called Queen Anne grant? Or did she steal it, and has she been obliged to shout adverse possession and confess her sin in taking it?

I suppose it is stupid of me, unheard of for me, crass impertinence in me in the face of the 4 Sandford case, and the other cases cited by Trinity and this referee (which cases Drake has studied so closely, and carried around with him in his suit case on his visits out through the States to exhibit to the poor heirs, whom he is so afraid will be robbed) to assert that Trinity never had any right to the Bogardus Farm under the Queen Anne grant, and that none of the cases show that Trinity got any more than the King's Farm under the Queen Anne grant, or I should say, these cases show that the Rector and Inhabitants of the City of New York got it.

Certainly when the people were taxed to maintain this church the same as they were taxed for other public offices, will you claim it was a private corporation?

I further ask this court, in view of the above remarks, made as late as 1860, which remarks stamp this referee's report as unworthy of confirmation, whether an attorney has a right to collect proofs to show that there was fostered upon the courts, particularly in the 4 Sandford case, perjured testimony and forged records, and that for unknown reasons justice was entirely ignored and intended so to be, with the willing assent of counsel for the plaintiffs, to the assumptions and presumptions used as a substitute for proof, where proofs could not be had.

Have I a right to differ as to what the proofs should have been? Have I a right to claim that the King's Farm never went above a point between Warren and Chambers Street, which was as far as the map extended, when I made Trinity bring from her own archives that very map which was introduced in the 4 Sandford case, but which was ignored by the Vice-Chancellor, and not taken advantage of by the Bogardus attorneys.

* * * * * * * * * *

Now let me again refer to the citation in the referee's report taken from 22 N. Y. (see folio 103) instructions to Gov. Dougan, Col. Doc. Vol. III, p. 331, for the purpose of convincing you that a Colonial Act approved by the Governor justified the contention that the law became effective until approved or disapproved by the Crown. All this is very fine, but the first question is did the Crown prohibit the granting away of the King's Farm? Did the Crown direct that the King's Farm and Garden should be held as a perquisite for the different Governors? Is the Crown a higher authority than the Governor or the Colonial Assembly? What right had the Assembly to pass a law and the Governor to approve it respecting a question upon

which the Crown say they should pass no law? The court has presumed in all these cases upon that question. If you look at the very citation which the referee has taken from the case in 22 N. Y., Vol. III, Col. Doc., p. 332, you will find the following:

> "But the said laws so assented unto by you, shall be good and binding until such times as I shall cause my dislike of or refusal to pass them to be signified unto you."

But if the court please, if you are going to accept that as good doctrine, if that is to be used against me, then please use this against the other fellow: (same page)

> "And you are not to pass any laws or do any act by grant, settlement or otherwise whereby my revenue may be remitted, lessened or impaired without my especial leave or command therein."

See the same provision Vol. III, Colonial Documents, p. 820; Vol. V, Colonial Documents, page 915.

Now according to these cases and the referee's report, it is these instructions from the Crown that determine whether the Governor's signature to the Assembly Acts gave them the force of law, until approved or assented to by the Crown; therefore it must follow that any prohibitive instructions from the Crown, denying both the Governor and the Colonial Assembly the right to grant this King's Farm or King's Garden, and directing the vacating of the extravagant grants, among which was the grant of the King's Farm to Trinity, deprived each of any power or any authority to act in respect to the King's Farm. The special instructions respecting the granting of the King's Farm was one thing, and vastly different from the general power respecting the granting of other lands.

Independent of the act of 1699 the Crown had directed the vacating of these extravagant grants, of which Cornbury had knowledge, and Cornbury recommended it. I quote the following from the Doc. Hist, State of New York, Vol. V., page 25:

> "As to the Act passed by the Earl of Bellomont for vacating, breaking and annulling several extravagant grants of land made by Col. Benj. Fletcher, late Governor of that Province. We are humbly of opinion that such exorbitant grants as are therein mentioned are highly prejudicial to that province, wherein we are confirmed by letter from the Lord Cornbury complaining of the said grants, and declaring that for some time he refused to pass the above mentioned act of repeal, whereby the aforesaid vacating act is among others repealed till he was induced thereunto by the Assembly's having at the same time passed the money bill in that letter mentioned, and we do therefore concur with the late Commissioners of Trade and Plantations in their annexed representation **that it is absolutely necessary the said grants be vacated.**"

Now note that this record is made in the year 1707; supposedly by the 4 Sandford case Trinity had been in possession two years; yet here is Cornbury, the man who it is supposed gave her the grant of 1705 acknowledging the receipt of instructions from the Board of Trade that these grants must be vacated, and also complained of them, now were his acts, if he committed them, valid or invalid? Cornbury then knew that the Queen, through the Board of Trade, was insisting on the vacating of the lease to Trinity Church. This document proves that the lease question was not settled in 1707, and we have only now to refer again to Gov. Robt. Hunter's declaration as late as 1715 "that he had granted it for his term of office which was all he could do, as the Queen was well acquainted with that matter.

Does this look as if Trinity really had a grant in 1705, and that Trinity also had possession under that grant from 1705, as these very decisions announce which no one dares scrutinize? Does this look as if the testimony that Trinity entered into possession under that grant in 1705 was true, and in this connection remember that Will Vesey in 1715 was appealing to the Bishop of London to have the Queen settle the matter of the farm; that it could easily be affected now, but hereafter not. Does this look as though Trinity thought she had title then under her grant of 1705? It rather looks to me as though she did not have title, and knew she did not have title and that the rector wanted the Queen to give the title, and that she recognized the acts of the Governor were a nullity and in violation of the Crown's orders. Please not Vol. V, Col. Doc., pages 7 to 26, inclusive, and particularly the following:

(See page 15)

> "As to that part of the report relating to the grant of the King's Farm, and which sets forth the vacating of it by the said Act for being extravagant, without expressing in what, it is likewise conceived, that the Act declaring it to be the King's Farm does therein sufficiently express the extravagancy of the said grant and the allegations against the said act recited in the report were without proof and are contrary to matter of fact."

(See page 16)

> (Mr. Heathcot's Grant:) But for the said Act it was said that the said land being part of the King's Garden was pleasant and absolutely necessary for the Governor, being the only conveniency left him for either fruit or salad, and as being part of the King's demesne neither **could nor ought** to have been granted away."
>
> (Lease of the King's Farm) But for the said act it was said that this farm was likewise part of the King's demesne, and therefore a great breach of trust in Col. Fletcher to grant it away; that it was likewise necessary for the present Governor's conveniency for the support of his family, and that he had settled on the Minister in lieu of the said grant about thirty pounds per annum, which was above twenty pounds per annum advantage to the said minister."

Does this look as though Trinity had re-leased the King's Farm? Does this look as though the Governor had violated his instructions and permitted a breach of trust? Were his acts legal or illegal? Were these questions before the court in any of these cases?

Going outside of the referee's report, although I do not consider that it is my place to do so, and time prohibits my taking up all the various subjects and questions that my line of investigation and study has covered—May I ask was Trinity ever legally chartered? Under the British law who had the power to grant corporate charters? Was it first the Crown and then Parliament, and in the case of

churches was it the Crown solely who reserved the right to make and forfeit church charters at pleasure? Was not the reserve right to forfeit as much a part of the charter as the terms of the charter itself? Is that not the construction that we place on our corporate charters? Do we not consider that the reservations in our laws are as much a part of the charter as though they were set forth at length therein? But was this so-called charter of Trinity Church a corporate charter, or was it a private charter under the English law to a select body of religious workers? What do the words "Rector and Inhabitants of the City of New York in Communion, etc., with the Church of England" mean? That is a collective term and includes every inhabitant of that city, did it not? And the Church of England, and over that church was not the Bishop of London the supreme head according to the English law, and above him the Queen, with Parliament second? Was that not the English regulation of the church?

Now where is there any authorization or doctrine for a Governor to give a corporate charter? Even Lord Cornbury, in 1707, questioned his own authority and power as a Governor to amend Trinity's charter, and this is the man they state gave them the Queen Anne grant. And Cornbury in 1707 said they stated to him their charter was defective.

If that charter was a nullity, then what did Trinity Corporation take when they got the grant, and how did they hold it? Now if this was originally a public corporation presuming its charter was good and not defective for want of power or authority in the Governor to grant it, or for other reasons, then what right has the state over public corporations? Did the subsequent changing of the name change the character of the corporation? Now I ask were these questions ever dealt with or raised in any of the cases?*

Go, if you will, and search the City Clerk's records covering the Colonial period. You will find therein proof that Trinity as late as 1769 was asking for the riparian rights in front of its property, but made no claim to lands north of the King's College, situated then on what is known as Murray Street, below Chambers.

This referee states at folio 47 that I asked for $1,000 a month, and that it is so stated in Exhibit 8; but look at Exhibit 8 and see who it emanated from, and find in the evidence one scintilla of proof that I ever sent one of these out. I call this a most unheard of instance of judicial bias and unfairness.

What public man in the City of New York does not know that the condition of our public records have been the subject of a great deal of criticism, and that the city has been expending thousands of dollars going over these conveyances and records. Is it not a fact, that it is well known that there are in the vaults of some of the title companies' books and records which have no right to be there? Is it not a well known fact that there are records and books missing from our public records?

What man who has searched our Colonial Documents and read them page by page does not know that there is evidence there of omissions in the compilation of these records? Now refer again to Vol. V., pp. 6 to 26, inclusive, and note how full the answers to the solicitor general's report are given in this state publication from the London papers, but look at the report of the solicitor general. There is no full report there, only garbled parts of it are published. How can you account for this. If you wanted the full report where would you go for it, to London, would you not; yet this referee ridicules the idea that I said the London records would have to be searched, why? Because Mr. Sprague has had the London records searched for proofs of the Edwards matter, and therefore I must not do any searching for myself and those I represent? Has anyone a right to go to London and get these records if he wants them, because he cannot find them here, without it being the convincing point that he is engaged in a fraudulent enterprise, and used as a reason for his disbarment. As to what our records are like, take for instance the Robert Hunter lease—will you find it in this country? Write to the State Librarian, or the Secretary of State, and he will tell you that he cannot find any record of it, yet we have a state authority for the fact that the lease was given —where is it? Is it in London? Have I a right to go and search the London records for it? Would that lease prove unquestionably that a falsification was perpetrated upon the court in the Bogardus case reported in 4 Sandford?

May God grant that there may be some public spirited person arise who will take it out of the power of these old men to sit in judgment upon anyone; that there may be someone who will have the interest of public welfare at heart to such an extent that this question may be agitated as to whether a man who reaches this age is capable of giving to a man what our courts are bound to give, impartiality.

CHARGE II

As to the second charge, I will set those charges out at length in order that the Court can see for itself just how near the evidence comes to bearing out this charge, and that this referee's opinion, the charges, the statement made by Calligari before the Bar Association, the testimony of Drake and Boynton, and the evidence are as far apart as the North and South poles.

This is taken from the petition of the Bar Association:

> "In October, 1914, Alexander Calligari, a Roumanian, residing in New York City, told the respondent that he thought he could raise money for the purpose of financing the prosecution of the claims, and the respondent represented to Calligari that he (the respondent) believed that the claims of these so-called heirs of Anneke Jans Bogardus against the corporation of Trinity Church were valid, and that he was certain to recover from the corporation several millions of dollars. * * * Relying on the respondent's representations, Calligari influenced a fellow countryman to agree to invest $25,000 in the project and to pay that sum to the respondent, and the respondent accordingly prepared a written agreement for the intending investor and himself to sign."

Now, gentlemen, mark "relying on the respondent's representations Calligari influenced a follow countryman to agree to invest $25,000." This is in the petition of the worthy Bar Association. I had Einar Chrystie, George Hoar and every member of the Grievance Committee on the stand, and not one of them could state that there was ever a man whom Mr. Calligari had induced to invest $25,000, not one of them had ever heard of the man, and Mr. Chrystie and Mr. Hoar both stated that they had made no inquiry of Calligari to find out. So that this part of the charge is made purely of whole cloth, and has absolutely no support, except the word of the man who made the false affidavit to please the Bar Association and Boynton and Drake.

Now please note that petitioners' charge says that Calli-

gari told Gridley that he thought he could raise money, etc. Now note on page 57 of the evidence that Drake, reading from a copy of a registry entry, states "Calligari is prepared to give particulars of his conference with Willis T. Gridley in the matter of the $25,000 loan requested by Gridley." And as to the latter part as to the investor, he states (page 57) that Boynton did not tell him who the man was; that Calligari did not tell him who the man was; that he had asked him but that he declined to state. Now I wish to call the court's attention to the fact that the entry Mr. Drake said he was reading from was dated October 29th, 1917. Now please follow the evidence. Mr. Candler was called to the stand by the opposing side to produce Trinity's register: (See Page 193, Mr. Candler.)

> "The Witness: There is an entry here of October 9th, 1914, which relates to Mr. Calligari.
>
> * * * * * *
>
> Q. Read it. A. Received a message from Mr. Frank L. Boynton to the effect that Roumanian Consul in New York, Mr. Calligari, 24 Stone Street, N. Y., had interviewed him in regard to the claims of Anneke Jans' heirs, saying a Roumanian acquaintance of his was about to enter into a contract with Willis T. Gridley by which in consideration of $25,000 to be paid at noon today, etc.

Note that the above entry is dated October 9th, 1914—now please turn back to Mr. Drake's evidence, page 41—he specifically stated that this entry was made October 29th, 1914—October 29th, mind not the 9th, and that entry starts

> "Received a message from Frank L. Boynton to the effect that Mr. Calligari, Roumanian Consul at New York City, was at his office, etc."

Note that when testifying in regard to this entry Drake stated (See page 38) that he had heard of the matter just twenty-four hours beforehand from Mr. Boynton; that he had called him up over the telephone.

I asked him if he had had any previous interviews in regard to this $25,000 matter, and he answered (see same page*) not until I heard from Mr. Boynton, I should say twenty-four hours before he met Mr. Calligari. I then asked him to give the date of the interview. And on page 41 he gave the date and said "The date Mr. Gridley was October 29th, 1914."

Now mind, gentlemen, he had not heard of the matter until 24 hours before he met Calligari, and see that he states on page 41 that on October 29th he attended at Boynton's office and learned that Calligari heard of me through Mrs. Winterfield. He states that the paper he held was more than a copy, that it was part of what was copied in the books, and that he wrote it himself.

Now again, please note; the affidavit Mr. Calligari signed before the Bar Association was dated March, 1915. I asked Mr. Drake this question on page 35 "How long before the affidavit that was filed with the Bar Association did you know Calligari? He states (line 12) "A short time before, and (on line 20) It was sometime, a short time, before the affidavit was drawn."

Again, let us turn to the evidence of Mr. Candler reading from Trinity's registry: "Mr. Boynton advised Calligari to tell his client that there was no hope of success in such actions, and that the claims were fraudulent, accordingly when the Roumanian met Gridley yesterday afternoon by appointment to sign the contract and pay over the money, the Roumanian told Gridley that he had considered it, etc."

Now, gentlemen, see this page 193 and 194 and there it states that this entry was dated October 9th. Now please turn to page 195 and you will find there is mention of an entry there of October 10th stating that they received a copy of the contract and handed it to Walker.

Now note on page 75 of Mr. Walker's testimony we have the paper, the contract, handed to him by Mr. Drake, and then please turn to page 95 and note he states "I think previous to the time that you came in to see me in October, within a week before then, I think Mr. Drake was in twice; on the first occasion he came in and said something about that Mr. Boynton or some acquaintance or friend of his, either directly or personally, or some of his friends, was negotiating with you for a contract to put up some money concerning this old Anneke Jans affair."

On page 96 in answer to another question he stated "he meaning Drake, said that he expected to have a copy of the proposed contract."

I asked him if Drake brought a copy of the contract at that interview and he said "No." At line 14 Walker stated "and the next day I think he came in and delivered to me this paper here."

At page 97 he stated "within a day or two after that first interview he came in to me, and I think then Mr. Boynton was present and brought that paper; and this agency of our Government also acknowledged, that with these two men trying to prefer charges against me in order to get the Government of the United States to act, that he did not inquire, and did not trouble to find out if there ever was a man who was going to put up any money.

Now let us turn to Boynton, who was called by the petitioner. See page 268. Mr. Boynton states that his interview was with Calligari on October 9th, and he states that on that day he telephoned Mr. Walker (see page 94, Mr. Walker's testimony, line 6.)

"Q. Did you have any telephone communications with Mr. Boynton? A. Never in my life and on that afternoon I saw Mr. Walker and Mr. Drake.

On page 271 he states that he got the copy of the contract that afternoon and that he gave it to Walker that day or the following day—that was the tenth of October.

Now please note page 276, 277 and 278 he is positive that it is Exhibit 35, the contract that was before the Association, that he copied, and he adds that in the morning he read it over, and in the afternoon he took it from Calligari and copied it. On page 282 when he was asked what his impression was as to whether Drake was present at the interview in the office with Calligari he answered his impression was that he was. On page 283 he states he saw Drake twice on the 9th of October, and he gave him the copy of a contract late in the afternoon (see line 9) "I gave him a copy, yes."

Please turn to page 195 and note—entry of October 10th "Received from Mr. Boynton a copy of the proposed contract of Gridley and handed it to U. S. Attorney Walker."

Turn to page 303 of Mr. Boynton's testimony and you will find that Mr. Boynton states that the memorandum which Mr. Drake acknowledged was made out by Boynton, and which Boynton himself acknowledges he made out, and which they both testified from, was prepared and given to Mr. Drake on October 9th. So that when Mr. Boynton drew that memorandum stating;

that "when the Roumanian met Gridley yesterday afternoon by appointment to pay over the money he told him he had considered the matter," etc.

he made a grievous mistake, for he had Calligari or his Roumanian friend meeting me, and telling me they would have nothing to do with the matter, before they had interviewed him, according to his own testimony.

The Roumanian met Gridley yesterday afternoon, and he was writing that statement on the 9th.

Now read Alexander Calligari's affidavit

> "That through a Mrs. Winterfield of Sheepshead Bay deponent learned that one Willis T. Gridley, an attorney and counselor at law practicing in the City of New York, was endeavoring to procure money to finance the prosecution of claims against Trinity Church Corporation in behalf of certain alleged heirs of Anneke Jans Bogardus. That deponent being of the opinion that possibly he could raise some money for this purpose, arranged an appointment with Gridley at the latter's apartment, 250 West 91st Street, New York City. That upon this occasion Gridley told deponent that he believed the claims of the alleged heirs of Anneke Jans Bogardus were valid and that he was certain to recover from Trinity Church Corporation several millions of dollars. That thereafter deponent upon the strength of Gridley's representations interested in the matter a fellow countryman, who agreed to invest $25,000 and that accordingly Gridley prepared the contract, a copy of which is hereto annexed. That before the $25,000 was paid to Gridley and before the aforesaid contract was executed, deponent learned that the claims of the so-called heirs of Anneke Jans Bogardus against the Trinity Church corporation were worthless, and advised his friend, who then refused to have anything further to do with the transaction."

One thing which certainly was originally in this affidavit, but which Calligari had altered (see register entries in Trinity's book read by Candler) was the following: "That upon this occasion Gridley assured deponent that the claims of the alleged heirs, etc." They altered it to "Gridley told deponent that he believed, etc."

On October 23rd Mr. Drake had a conference with Mr. Hoar (see page 195) in reference to an attempt by Willis T. Gridley to procure $25,000. Mr. Drake left with Mr. Hoar a copy of the contract. (See page 196.)

Now see page 196 and compare it with the testimony given by John N. Drake at page 41 (witness read from a paper which he had asked to be allowed to put in in substitution of the original office record (see page 40):

"Mr. Gridley, will you allow me to substitute for the original office record, which are large ledgers, will you allow me to substitute a typewritten copy, of it, if I will swear it is true?" (possibly it may be here among the papers) and after stating that the date of the paper was October 29, 1914, he read in substance the very entry which Candler took from Trinity's register and said that it was dated October 9th.

Now please note the entry of March 10th, 1915, in regard to Calligari's visit to the Bar Association:

> "Attended at the office of counsel for the Bar Association with Calligari for the purpose of preparing memorandum for execution by Mr. Calligari."

and Mr. Candler states that these entries are signed "J. N. D.," meaning John N. Drake. Then let us turn back to Mr. John N. Drake's testimony, page 35, and you will there find that he testifies:

> "You never knew Calligari before? A. Before when?
> "Q. Before this petition was drawn, did you—I mean the affidavit was drawn that was filed with the Bar Association? A. A short time before."

Trinity's register states that he went to the Bar Association March 10th, 1915, for the purpose of having Hoar draw that affidavit, and that Calligari accompanied him. The register also states that he met Calligari October 9th, and Boynton so states. Walker states they brought the contract to him October 10th; so the affidavit was drawn just five months after Drake met Calligari, and yet at page 35, line 20, Drake again reiterates

> "It was sometime a short time before the affidavit was drawn."

On March 22nd Drake went to the Bar Association with Calligari and the affidavit was then signed after making certain corrections indicated by Calligari (page 205 of the testimony).

In the Calligari affidavit, drawn for him by the Bar Association, he states that he heard through Mrs. Winterfield that I was endeavoring to procure money for the Bogardus matter—now look at pages 321 and following:

> (Calligari) "I will tell you how I know the story so that you can understand it. I was looking at that time for some capital. There was a lady, Mrs. Bulmer, mother of Mrs. Winterfield, and she said something about a claim against Col. Jacob Baker, and I was looking for—I wanted some capital to go on and try to get this money from Colonel Baker for Mrs. Bulmer, and Mrs. Winterfield told me that this case had been given to Mr. Gridley for her, and said I will introduce you to Mr. Gridley, and if we can find some capital we can work on it."

Now see page 501, testimony of Mrs. H. V. Winterfield, line 20:

> "A. * * * Mr. Calligari came home and he said that he had decided to try and raise money for Mr. Gridley in the Trinity matter. Up to that time I knew nothing about the Trinity; never had heard of it; never knew there was such an investigation going on."

Now see page 322 (Calligari):

> "And when I thought it over I told Mr. Gridley that I should be willing to find some capital, that I have a man who would find some capital; and I offered Mr. Gridley to find some capital for his business. Mr. Gridley did not want to accept it, and I told him, I said, "Well, why don't you accept it, if you give some money I think I can find it; and I found a friend of mine who was going into this business for $25,000. And I went —I had at that time a client of mine, Mr. F. L. Boynton—who is here, who is one of my clients. * * *"

Now please note that he states that he offered me—not that I requested, or that I had endeavored to procure money from him—but that he offered it, and I tell you, that was what made me suspect the man. He came to me on the Baker business, and he switched too easily over to the Trinity matter.

Now in speaking of a circular which he states I was showing to him he says (page 324):

> "It was a printed circular about this corporation and Mr. Gridley was showing it to me.
> Q. He showed it to you in his house?
> A. Yes, but not with any intention to ask any money. He just showed it to me—this was what he was doing, what he was working for."

Where is there any proof here that I endeavored to obtain money from this man; that I requested money from this man. Where is the evidence here that he heard of me and my schemes through Mrs. Winterfield, as Mr. Candler read from the Trinity register.

Now again (page 324):

> Q. How did you know Mr. Gridley wanted any money to put into it?
> A. Well, I did not know it. I thought myself, "If you need any money I am prepared to find it for you. I really proposed it to Mr. Gridley."

Now, gentlemen, would you consider such a man's testimony for one minute as worthy of belief? Here you have a statement of what he said to Boynton; do you believe Boynton? Then you cannot believe Calligari. You have a statement of what he said to Drake; do you believe Drake? then you cannot believe Calligari. You have Calligari's affidavit, and does it dovetail in any manner with the testimony inserted into these proceedings? certainly it does not, and it is therefore safe to assume that he did not know how to tell the truth in any particular. I had every cause to believe when that man switched to the Trinity matter so easily when in truth and in fact he had come to me about the Baker matter, something in which his friends and mine were interested, I had every cause to doubt his sincerity, and I had a perfect right to do what I did, go right along and find out who was back of him, and I committed no wrong as long as I did not take this man's money.

Read all the way through from 321 to 329 of the evidence, and you will not find one word where this man testified I said there were millions in this, as Drake stated he said to him, as Boynton said he said to him and as Calligari states in his affidavit.

I refer specifically to this man's affidavit wherein he states and swears, mind you, that he heard through Mrs. Winterfield that I was endeavoring to procure money, etc. Now note page 328, where I said to him, "Now you have made this affidavit here, stating"—and he answered, "I never said anything different from what I said there. What I said there is true, etc." That man knew he was lying, knew he made a false affidavit, and knew he was lying then and he didn't even remember the affidavit so he could not have known whether it agreed with his testimony then being given or not. Very true indeed is the old saying that a liar has to have a good memory.

Will you take this testimony, and the testimony of Mr. Drake, Boynton, Walker, Calligari, and the registry entries of Trinity and state that there was no plot here. Read Exhibit I, memorandum made by Mr. Boynton on October 9th, 1914:

> "Shortly after my talk with Mr. Calligari this morning and in pursuance of the advice I gave him, his Roumanian friend telephoned Gridley from Calligari's office, and in his presence saying that he absolutely refused to enter into the agreement or have anything to do with the matter."

But on page 194 Mr. Candler read:

> "Accordingly when the Roumanian met Gridley yesterday afternoon by appointment, etc."

and this is the memorandum made on October 9th, 1914.

If you were in my place, if you had been hauled up in these disgraceful proceedings, simply because you were in the way, if you had had to stand idly by and hear these plotters backing and filling in this manner, if you had heard them lie as they were palpably doing, how would you have felt? Would you have felt that it would have been possible for the Bar Association Grievance Committee after reading the testimony to send the matter any further on such a papier mache foundation? If they had done to you what they have done to me, and had sent it to this Court, would you not feel as I do, that it was the duty of this Court to read this testimony before subjecting me to this expensive proceeding, and if you had read that testimony, gentlemen, doctored as it was, would you hang a dog on it?

Now, gentlemen, in further reference to Mr. Drake's and Mr. Boynton's connection with Calligari see letter to Einar Chrystie, in which Jay & Candler state that they enclose copy of agreement in blank which was a few days ago handed to us by an attorney in this city formerly connected with this office. This is the contract Drake received on the 9th of October from Mr. Boynton, according to Boynton's testimony, and according to the Trinity Register entry made by Drake and read by Candler, and yet they were writing on the 23rd of October, 1914—fourteen days after they had received the contract—to the Bar Association stating that they had received it a few days ago. And why? I will tell you why, gentlemen, because they did not receive the contract which was presented to the Bar Association at the time they state they did—they received it sometime after the morning of October 13th, I don't know the exact time, but I know they could not have received it before that time, because that is the time Calligari got it.

Now turn to letter No. 3, which Jay and Chandler wrote to Walker, and see where they state

> "He (meaning Calligari) did find this money from a fellow countryman, who agreed to make the venture if Calligari would sign the contract proposed by Gridley."

Do you find any evidence anywhere to bear out this statement? Will you believe now that this was part of a concocted scheme? Then Jay & Candler further state that Calligari received the contract through Mrs. Winterfield (see same letter No. 3). Now please note, page 332:

> "Now you told me the terms that you wanted in this contract, didn't you? A. Yes, sir, I told you the terms * * *. Q. And I sent you a copy of the contract to submit to this man? A. Yes."

Does this look as if they were all telling the truth? Now please note what he says about this contract, mind this is the one he was supposed to receive the day he went to Boynton on the 9th of October.

> "And you sent that back to me? A. I haven't submitted it to him.
> Q. You didn't have that contract? A. The first time when I submitted it to my friend he said, 'There is no specified $300,000, and you changed the contract and gave him the other one and that is the one I gave Mr. Boynton."

Now please note, the one he gave to Mr. Boynton is the one that went to him on Saturday, October 10th, in the evening. He was up at my place with Mrs. Winterfield on Sunday complaining that I had blocked the deal going through the week before by my slow methods, and said that he had not the contracts then, and I told him then they were in the mail, and he complained and said that the next day being October 12th was a holiday, and that he could do no business that day, and he got them on the 13th of October, and these are the contracts he states he submitted to Boynton.

Now note on pages 338 and 339, where he acknowledges the conversation he had with me, after the contract was sent back to me and had been altered. Now this man acknowledges being at my place on the Sunday— does this bear out my statement that this was a plot? Boynton states he got the contract on the 9th of October, 1914. Gentlemen, look at the calendar; the 9th of October was Friday, the 10th was Saturday, and Sunday was the 11th; Thank God, Father Time cannot lie! I have him acknowledging that he was at my place on the 11th, three days after Boynton states he got the contract. Now note page 336: "Q. You were not to come to my house Tuesday morning, were you? A. I was to, but I did not go. You told me to come, but I knew from Mr. Boynton and I did not go." Tuesday, October the 13th, 1914, he knew from Mr. Boynton and he did not come. But note in the following pages he remembers he was there and that I told him it was a frameup. On page 339 he states, "Mr. Gridley, when I came from you I went to advise with Mr. Boynton, who is here."

And then this man admits that he gave me a fictitious name of the would-be investor, and that he did not want to give me the correct name. He would have had a mighty hard time doing it, because he knows, Boynton knows, Drake knows and Walker knows, and everyone of the members of the Grievance Committee know that there was no man, no would-be investor, and that that part of the testimony was taken good care of. It evidently, this very important feature, had nothing to do with the matter.

I want to also call the Court's attention to the fact that Mrs. Winterfield stated that Calligari said he had shown the circular to Boynton before he got the contracts. Please look at page 197 when Mr. Candler in reading from the registry stated that Calligari had promised to send a copy of a certain circular or other paper which I had given him.

I would like to call the Court's attention to the next exhibit letter No. 10. These letters spoken of in this letter which Drake received from Blandy, Mooney and Shipman were in no way connected with me, and it would seem that the Bar Association should have taken some notice of this, if they are so particular as to the honor and integrity of the legal profession. Here was a firm of attorneys palpably loaning out letters received from a client, of whom Drake says in his letter to Chrystie: "Should she become repossessed of these letters, you may have difficulty in procuring them from her." Do you think these letters were allowed out of these attorneys' keeping with the lady's sanction?

All these exhibits and the Trinity Register would have it appear that these people knew better what occurred between Calligari and myself than what Calligari knew, for certainly his statements before the Grievance Committee do not show any such state of facts as they put forth, which is but another proof that the papers and everything else in connection with this proceeding were all mapped out even before the contracts which Calligari asked for were drawn.

I want it distinctly understood that all this testimony as to Boynton's, Drake's and Walker's connection with Calligari is taken from their own statements before the Grievance Committee, and from the evidence, and as this Referee has not sought fit to be fair enough to refer to the testimony of my witnesses, who are the only ones who could state what Calligari said to me, because Drake and Boynton were not present and they were, I shall refer to it and its specific bearing upon this matter. While we are on the subject of the fact that there is no one else who can give any testimony in regard to this, I might add, does it not look to you as it did to me, that having testified before the Grieveance Committee, and in the vernacular of the street got "cold feet," Calligari was sent out of the country to prevent being put on the stand and having to testify to his lies under oath, his co-conspirators not being so particular. You see, despite the fact Calligari was a rogue he knew Mrs. Winterfield had been good to him and his wife, and when he approached Mrs. Winterfield to take those contracts to Jay & Candler and collect the bribe, and she treated it in the manner in which she did, Calligari knew that he had gone too far. And Calligari did not go out of the country until after Mrs. Winterfield's affidavit had been filed, and he left this country just after he must have been informed that she would be a witness against him on these proceedings. I was served with the papers December 25th, for a Christmas present, and Mrs. Winterfield and her mother, Mrs. Bulmer, were present, and Mr. Calligari left this country that month on and about the 31st.

Mrs. Winterfield testified to the fact that she did not inform Calligari about the Trinity matter, as before stated, because she did not know anything about it. This is not unusual, although she was a constant visitor at the house, because the matter was rarely if ever spoken of in front of strangers. The matter was, however, brought about just as the evidence states in an effort by Calligari to get me to make a statement as to the Baker estate matter. Calligari was at my place several times. He came first along in the spring of 1914, but did not come again until about the fall, and it was at this time that I used by way of illustration the Trinity matter, but not for the purpose of raising money, as Calligari so states. When Calligari switched so quickly I naturally was wary. Every lawyer is cautious, his profession makes him so, and while I did not suspect him right then I certainly had a right to when he came into my place a few days later and said that he had succeeded in raising $25,000 through a Wall Street broker; then when I asked him for the name he would not give it to me. I cannot remember the many and ridiculous things this man said to me which put me on my guard, but it is a fact that from the time he said it was a Wall Street broker I made no secret of the fact that I considered it a trap, and that either Calligari was innocently following a master mind, or he knew what he was doing, and was doing it at the bidding of the master mind. Read page 337 of the doctored Bar Association minutes:

> "Q. Did I tell you that? A. Did I tell you that I knew this was a frameup? A. Yes, Mr. Gridley told me he believed it was a frameup.
>
> The Chairman: When did he tell you that? A. I really don't remember when he told me, your honor. I really don't remember when he told me that, but I remember that he did tell me this was a frameup."

The learned Referee would make it appear that there was

some confusion in the evidence whether the contract represented by Exhibit 13 or that represented by Exhibit 35 was brought to Mr. Boynton. I contend that this is not a fact, there is no confusion; that simply exists in the mind of this Referee. There is no confusion in my mind, there certainly was no confusion in the mind of Calligari, for he states that he did not take the contract of October 9th to Boynton, the first contract. Therefore it was the second contract, which he got October 13th. There is no confusion only that which they want to throw around this transaction in order that the fact that they had their heads together before the contracts were even thought of must be covered up, and any evidence that Calligari was sent back to me by them to have those contracts redrawn must be confounded and thrown into confusion.

As far as Mr. Poulson's testimony is concerned regarding this, I will admit I think he was right in this, for his signature appears on contract 35, as they call it, and does not appear upon the other, and contract 35 is, as near as man's memory can serve him, the second contract which was exhibited both at the Bar Association and at the hearings as the contract that was given to Boynton on the 9th, and it was not until I had given away the fact that the contract could not have been received on the 9th, that Boynton was back to the stand (1161 and 1162) and corrected his evidence which he was so determined about, and states that he does not remember when he first saw exhibit 35. Oh, it was such a bungling piece of work, not at all the usual class of work done by people such as these. These are the kind of people who make a fellow as comfortable as they can before execution.

Now I want to state that at folio 132 the Referee has not stated the truth. The contracts were drawn on the night of the 8th and the afternoon of the 10th of October in both instances (1914).

Note again, his reference to the fact that I called a number of witnesses to attack the character of Mr. Calligari, and that I called the members of the Grievance Committee but without any result. That it was perfectly apparent from these witnesses that they had no connection whatever with the plan for the proposed arrangement between Mr. Calligari's client and myself. So this is what he is pleased to state was my object for calling the Grievance Committee. Well, I guess it's up to me to put him right on it. I called them to prove that notwithstanding they had entertained these charges, not one of them had done the usual thing in cases of complaints against members of the bar, not one of them had investigated Calligari's story, and not one of them had had the witness Calligari investigated, and not one of them had the slightest knowledge of whether there had ever been a person whom I could have robbed of $25,000.

As to folio 138 of the Referee's opinion that Calligari had known Boynton for some time. Both of them stated that they had had business connections for just three months—not such a very long time. But note, please, that like a bolt from the blue, without me saying one word about Mr. Boynton, Calligari stated, "I did not know that Mr. Boynton was after you. I never knew that Mr. Boynton was with the Trinity Church people (see page 331). I never knew Mr. Boynton was for the Trinity Church; I never knew it. I never knew that Mr. Boynton was acting for Trinity Church before this and I went with the paper to consult him if it was all right." And in the face of all this testimony, if the Referee read it. Calligari states he did not take the first contract to Boynton, and Boynton states that he got the contract on the 9th, will you believe what is palpably the fact that this poor devil was between two fires and that he had to get out, and that contrary to the Referee's statement that the matter was not known to any of them until after the contracts were drawn, the very contracts were part and parcel of their scheme. And this is the creature that your Referee will commend.

See how unfair, dishonest and biased this Referee is in folio 140. He knows from the testimony that there were two contracts; he must know if he read through Calligari's statement that he was at my place after the first contract was drawn and got another. He must know that I had already been informed as to who Calligari's attorney was, for I so stated under oath, but he states that we concluded it was a frameup the minute we knew Mr. Calligari had gone to a lawyer, and we so informed Mrs. Winterfield. He glosses over the fact that three witnesses stated that Calligari had asked for a small contract giving the terms of it for the man's lawyer to see, and he must know from the evidence that I had every right to consider this was a frameup from the first, and that I did so consider it. Then why seek to falsify and state that I did not think so until Calligari had gone to a lawyer.

Now, gentlemen, after reading all the testimony of Mrs. Winterfield's, Mrs. Bullmer's, Mrs. Rafkin's, Mrs. Wright's and Miss Wright's just read what this Referee states at folio 144:

> "Even after having lent to some extent a willing ear to the entreaties of Mr. Gridley and Mrs. Winterfield."

Here he is calling in a perfectly innocent party, Mrs. Winterfield, who stated under oath that it was Calligari who sent her after the commissions, and accusing her of entreating Mr. Calligari to get this money for the Trinity matter when there is not one scintilla of evidence to so show, not even from the mouth of the rogue Calligari; it would seem that in this case the honor of the rogue was greater than that of this Referee, for that he would not state that I had entreated him, but did state several times that I had refused it but he offered it.

As to Mr. Calligari becoming an informer against me, do you think my conduct throughout shows that I did not expect him to be; why do you suppose I got Calligari to bring back the envelopes in which the contracts were mailed?—To show that there were two contracts, and when the time came, to have the United States Government stamp witness for me as to when he received them. Naturally knowing that their heads were together, or rather knowing that Calligari was being directed by someone, I knew that dates would be a very important item. As to the loss of the copies of the contracts that I had, that is very simple; I lost a great many papers in connection with this matter when I moved. They had all been rolled up together and on my desk, and after I moved to Brooklyn I could not find any trace of them.

As to the Referee's statement about Calligari conceiving the idea that it would be more profitable to become an informer against me, and that there is no evidence of that fact, please look at page 545, Mrs. Rafkin's testimony:

> "We were not speaking of you or the matter at all, when all of a sudden he turned 'round and said, 'If I say something to you will you promise faithfully that you won't tell, won't say anything to Mrs. Winterfield about it?' I said, 'Certainly.' He said, 'Give me your word of honor you won't speak to Mrs. Winterfield about it?' I said, 'All right.' He said, 'Gridley is in a lot of trouble with the Bar Association.' I said, 'Is that so?' He said, 'Yes, it looks pretty bad for Gridley.'

He said, 'You know, I could get a lot of money out of these people if I wanted to go on the stand against Gridley. I could get a lot of money from the Bar Association if I wanted to go against Gridley.' I said, 'Why don't you do it?' He said, 'I would not go against Mr. Gridley'."

And in his zeal to help the interests he represents, he forgot that what she promised was not to tell Mrs. Winterfield; he forgot that he had just sworn her to tell the whole truth and nothing but the truth; he asked her if she had told it to Mrs. Winterfield after she had given her word of honor not to tell anybody, and she had answered not until after they had met Mrs. Wright on the train. If you will read Mrs. Winterfield's testimony you will see that upon Mrs. Winterfield and Mrs. Wright meeting on the train for the first time in about a year they learned from Mrs. Wright what Calligari had done. And in connection with the fact as to whether he got the idea that it would be profitable to turn informer against me or not, I want to say that it does not look much like an afterthought when Mrs. Winterfield, Mrs. Bulmer and Mrs. Rafkin all testify that he stated that the first contract did not suit Mr. Boynton; they all testify that he told Mrs. Winterfield to take the contracts to the office of Jay & Candler and that she could get $3,000 for them.

I have tried to state the absolute history of the Calligari matter, but I feel very keenly on this point, because I feel that I have done nothing more or less than our Government is doing day by day, setting a thief to catch a thief. I set Calligari to catch the people back of him, and I acknowledge that it was zeal for the cause I am working for which made me do it. I thought that if I could find out Trinity or her lawyers were back of this man it would be a good thing to show to the world at large; that because a man took up work which our historical societies and title companies are doing every day and every minute of the day, they would lay such a dastardly plot as this, feeling secure in the belief that so long as I did not take the money I was perfectly safe.

And I submit that nowhere in the history of American jurisprudence will you find that a man has been convicted of any manner of crime upon the word of a liar or a thief. Calligari has proved himself to be a liar; Boynton, Walker and Drake have proved themselves to be the same, and I am sure that a man who deliberately takes money from another is a thief, and that is what Calligari has done as well as robbing his own Government, and you have here in this paper your Referee lending respect to that crook, and bemoaning the fact that he was not here to defend himself. Read the testimony of Walthers, Gehwertz, Athenson, Mrs. Winterfield, Mrs. Bulmer and Mrs. Rafkin, and I could have produced a dozen others who were willing to come forward and state what sort of a character this man was, and then tell me whether Calligari would have even attempted to defend himself in the face of such testimony.

The Referee under Charge II makes the statement that Calligari's testimony before the Grievance Committee was put in evidence by me. Mr. Jackson presented that statement and asked that it be put in evidence, and I, after some words consented to it going in, solely for the purpose of proving that Drake's testimony, and his reports, Boynton's testimony, and his letters, and Jay & Candler's records were false, and were diametrically opposed to what this man said in the statement before the Grievance Committee.

Please note further, in folio 114, that this Referee after hearing all the testimony given by reputable witnesses on the stand that this man was not the Roumanian Consul here, could not have been Roumanian Consul here, because he was an exile from Roumania, he has to repeat that Calligari was at the time "as he termed it" practically nominated as the Consul General here for Roumania. I verily believe that if that man had been here, and been able to take the stand, and even if on the stand I had made him acknowledge that he was an exile, as was known at the time, and that he could not have been Consul General of Roumania. If I had made him acknowledge, that about the only thing he could be in that line would be Consul General of the Liars United, just because that fact was in Boynton's memo. and Drake's and the Trinity Register, this Referee would have still reiterated it. He would not have even taken Calligari's word for it.

When he makes the statement that Calligari was introduced to me through a common acquaintance why not be fair enough to state that Calligari was introduced to me by Mrs. Winterfield, one of the witnesses before these hearings, and came to see me for another purpose entirely, and switched himself on to the Trinity matter wholly without any invitation so to do.

I want you to note at the bottom of page 44 and top of page 133, he states that my testimony as to the supplemental agreement is a direct contradiction of what I stated to the Grievance Committee, and I want to state right now, that just because the Calligari statement before the Grievance Committee has been allowed to creep in here, I certainly object to any further consideration of the minutes before the Grievance Committee; they are false, garbled, erroneous, jumbled up pages of characters, which this poor man made into a semblance of what he thought should have been said; that they truly represented what was said at that hearing, certainly the word of such a man as C. N. Kimball, an acknowledged expert, the man who was used in the Thomas Mott Osborne case, should go for something. I had two experts on those minutes, made necessary because although I had employed Mr. C. N. Kimball to do the work, the Referee, although Mr. Kimball had a perfectly legitimate excuse, he being tied up in the International Typewriter Contest that week, would not allow this matter to go over until Mr. Kimball could finish his work. It was therefore necessary for me to find another man.

Shorthand experts are scarce, they are not like handwriting experts, and naturally when you find a man like Kimball, you feel that you are in the hands of a man who will give you a square deal whether in your favor or not, he will state the true facts.

No amount of persuasion would induce this Referee to allow this matter to go over until the International Contest was over. He would not even listen to me, likely thinking that I would not be able to find another expert to attack those minutes which they were trying so hard to use.

Mr. Kimball on page 733 in speaking of these notes said:

> "I found that these notes were possibly the poorest that I ever saw; and my own opinion would be that the man who wrote them was unable to do with his hands what his head wanted his hands to do for some reason or other.* * * * * * * But the notes themselves are very poor, and unquestionably some of it he couldn't read, as shown by the transcript; there are some characters that are left out altogether in the transcript; what they are it is beyond the possibility of a human being to find out or read; he couldn't read

them himself, and it was impossible for anyone to read them.

* * * * * *

At page 734:

There are places * * * * * in which he has erased his original characters and written in some things; whether it was what he had originally or not cannot be determined, and there are other places in which, as I say, he has omitted quite a number of characters, and it is impossible to understand what they mean or what he meant they should mean, and probably and I may say **undoubtedly that was his own language.** As to speed, to look at the notes, you can see the speed was, probably, too much for him at the time, and while he did his best, they are very very poor notes, and while they can be made to fit the transcript up to a certain point there are places in there where they do not fit, and where the notes here are not read at all as shown by the transcript, and there are places where they have been **changed and interlined, unquestionably after the taking of the testimony as it would be impossible for him to have done it while the testimony was being taken.**

These notes are constantly referred to in this Referee's opinion, and if he copied from the brief of the correct counsel for the prosecution, I suppose he has also referred to them, and I want you to note the following taken from the evidence while Mr. Kimball was on the stand:

MR. JACKSON: I don't see why I should be brought here on your Honor's time occupied with taking testimony of this kind.

Now please note why this testimony was taken, see page 731:

MR. JACKSON: What is the application?
MR. GRIDLEY: The application is, I understood your honor to say that this reference ought to be closed at the next hearing, and I am in this situation. I cannot get Mr. Kimball's testimony on the coming Thursday, as he is about to leave for the West.
MR. JACKSON: Would you care to give his testimony now? I understand Mr. Kimball is here.

THE REFEREE: It can be taken today.

After stating this, Mr. Jackson objected to taking up the time with the testimony of this witness on this important matter, and when he so objected the referee answered

THE REFEREE: And no earthly use whatever. (See page 736.)

No earthly use for me to attack those minutes which had been continually used against me throughout these hearings; taking different parts of them where a little preposition would have made all the difference in the world. It would have been impossible to go through with these hearings without in some manner referring to the proceedings of the Grievance Committee, and while both sides repeatedly referred to them, I certainly do think in the light of what both experts said in regard to these minutes, they should not have gone on the record or any part of them. As I say it was impossible not to refer to the proceedings before the Bar Association at times in this matter.

Please note at page 737 Mr. Kimball states

"There is not a page that did not call for astonishment on my part when I read them and that is a fact; both the interlineations and erasures and lack of reading the notes."

Mr. Kimball stated he would have to have some time to go over the notes after he returned from Salt Lake City, and the Referee said to Mr. Kimball that they would have to be done there in his place; some difference in his treatment of the expert Bridge, because some of the things he said on the first day met with the Referee's approval. He was not quite so positive as Mr. Kimball, hence he told him that he could have the books to go over at his home, because he looked like an honest witness.

Don't you think that's a pretty good one on the great C. N. Kimball, the first shorthand expert of the State of New York.

When that witness was put back on the stand and made to take a magnifying glass, (mind my own witness,) I had to drag it from him line by line and word by word that there were interlineations and erasures. Now please note on page 783 where I started him on the erasures, and he acknowledges to a great many, and take it from me it was by absolutely sticking to the job that I was able to do this, because even the witness, my paid expert, was unwilling to tell the palpable changes in those minutes. Why? I do not know; but as the Referee considered him an honest witness, perhaps his testimony that he gave will help the matter more than Mr. Kimball's who showed plainly he had no interest other than as an expert either one way or the other, and did not care what bearing his testimony had on the notes one way or the other.

Leaving the Grievance Committee minutes and returning to the Referee's opinion, I want to say that the Referee in pointing out to you, as he does at folio 140, page 47, of the opinion, the amount of money which Calligari had disposed of out of the $25,000 he was raising, is pointing out one of the phases of the matter which caused me to believe that this was a bogus offer, and mind all these little perquisites were mentioned from the first. The $5,000 for an automobile for the man's son's affinity, and the money for Calligari himself, and then he sent Mrs. Winterfield to me to ask for commissions and to get it in writing, what do you think of it? Is there any man here who would consider there was anything to matter but a frame up.

The Referee states that I was unable to answer questions, that I was asked time and again as to whether or not the statement written to Mr. Walker was true, and that I was unable to state whether it was or not. I particularly went back on the stand to answer this question, because I had not at first understood Mr. Jackson's question. I explained minutely to them both that I was not well, and that I was doing my best considering the condition of my health.

Now I want to say I cannot understand what either the Referee or anyone means by that supplemental agreement, or contemporaneous agreement being an afterthought—Naturally I did not think of it when Calligari approached me. Naturally I did not think of it when I drew the first contract, but naturally I did think of it when I drew the second contract—I thought of it upon the persistence of Calligari that it was bonafide on the Sunday, October 11, 1914—certainly what fool would have determined on drawing a supplemental agreement, when he never expected to see the man or find out who he was. All the time entertaining the idea that it was a bogus deal to procure his arrest and

proceeding on that theory. Why did I draw the contract at all without seeing the party? Simply because clients told me that Trinity had put this kind of a deal over on other attorneys, and they wanted me to find out if this was another of Trinity's beastly schemes, and the record here shows it. When I proceeded I felt secure in the belief that as long as I did not take their money under any of these agreements, I was absolutely safe. I contend that under the testimony given on the hearings and to which this Referee has referred in folio 140, there would have been no money left for me to take for Calligari and his side had it all spent in their minds. I further contend that the first prerequisite to the maintaining of this proceeding by the Bar Association, who were used here as the catspaw of Trinity Corporation was to produce some honest proof that there was an injured party.

Certainly Calligari is not an honest witness; his unsworn statement before the Bar Association is pretty poor substance on which to disbar an attorney, and it is a pretty fine showing for a great big organization delegated to uphold the honor and dignity of the law to proceed in a matter of this kind against an attorney without investigating the character of their complaint, or even ascertaining that there was $25,000, or a man with $25,000 that had been in the slightest degree deceived or misled.

When I wanted to find out who this would-be investor was before the Grievance Committee they said it did not matter. Of course it does not matter to them whether there was an aggrieved party or not; they were altogether too willing to assume that there was such a living creature, ready to give it up without seeing the man he was going to give it. Yes too willing to suit me, and just willing enough as I claim to justify the inference that they were a fixed body, and were being used knowingly by Trinity. What prosecuting attorney would proceed against a man for attempted burglary of a house without going to the number and ascertaining if there was a house or a vacant lot there. I say the evidence justifies the conclusion that the Grievance Committee knew and has known, that they could not produce a man to whom Calligari had gone who had $25,000 in bank for the purpose they claim.

Look at Exhibit I where Boynton on October 9th was drawing a report "United States of America against Willis T. Gridley" does that look as though they were in a plot to have me arrested if they could get some bad money on me? Why were they planning to get me to go down town and take this money in a bank. Does that look as though they wanted some marked money on me. I was asked upon what theory I entertained this idea, when a blind man could see through it.*

Now look at page 987, line 11, for copy of Exhibit 11, being the special delivery envelope in which Calligari enclosed the first contract, which was not satisfactory to these conspirators, who were drawing up papers on October 9th, United States of America vs. Willis T. Gridley.

Will anyone claim that those conspirators did not send back that first contract to have the $300,000 put in, for the purpose I suspected, to-wit: have a ground for my arrest for obtaining money under those contracts, which they had schemed for? Does this look like a conspiracy, and the only question is can these conspirators use this Court to reap the fruits of their plot.

Then why did not Walker proceed? The contract he had was the first contract drawn, the one they received on the 9th of October, 1914, and he testified that he did not know, and had not inquired, as to whether there was a possible investor. That would be the first proposition he would inquire about, if this was bona fide. I submit that there is no reason why we should be fooled into accepting his testimony, but we have a perfect right to assume that he knew there was no one.

Right here is one of the reasons why Calligari was sent away, and kept away. The Bar Association protected him from naming any man. Why? They knew he could not produce a man who could muster $25,000 who would stultify himself by false swearing even to please them.

I want to call the Court's attention to page 48, folio 144 of the Referee's report, where he states that in the face of the knowledge I possess of the state of the title of Trinity Church, as confirmed by the decisions of the State of New York, that mine is a fraudulent enterprise. I state positively that in the face of the knowledge I possess of the state of the title of Trinity Church, according to any decision mine is not any fraudulent enterprise, and that I have a perfect right to use the public records for what they are intended to be used.

Read Exhibit 31, form of retainer, and then state under your oath as judicial officers if there is anything in that paper that spells of fraud. I testified myself, and that testimony is uncontradicted for they produced no one, that they could not produce any proof that I had ever accepted a dollar except for investigation work. My receipts will show this, see pages 342, 343, 344 produced by Mr. Brower at the petitioner's request, and put in evidence by the petitioner. On every receipt, I state "for investigation and not for suit," and then having perhaps reached the conclusion thus far that I am not deceiving those I am working for, please turn to Exhibit OO entitled "Conditions" which I stated under oath is on the back of every bit of correspondence that leaves my hands in connection with this work. Do you think after reading these conditions anyone could be deceived by me, or that you would consider an investigation of this matter a fraudulent enterprise under those conditions.

Why should this enterprise, as the Referee calls it, be any more of a fraudulent enterprise than that conducted by the man Washburn, and the eminent Mr. Sprague, who both acknowledged on the stand that they had received money for such investigation, and as far as Mr. Sprague is concerned quite a substantial fee. As long as there is a public archive, is there any one in this country who is powerful enough to say that a man cannot make a search of those papers? As far as the Referee's estimation of the title to Trinity Church property is concerned, it is needless for me to repeat what the cases in this state hold, for I have briefly touched upon this, and to go into this matter fully would take an endless amount of work. I would have discussed them upon the hearings, but I was not allowed to, always being objected to, and told that they spoke for themselves. It must be apparent from a reading of the decisions that while one case holds that Trinity got the title under the Queen Anne grant, still another holds that if there was a person that could offer the proof the State offered, and who could show that he was a lineal descendant, that he would have a standing in Court as late as 1860. I respectfully submit therefore that as long as the courts do not agree on this title question, there is very little excuse for trying to disbar a lawyer for investigating the matter.

According to the Referee then Mr. Sprague was wrong, because he knew of the 4 Sandford case, and so was Mr. Washburn, and a hundred years from now any lawyer who is employed to look up this matter cannot go any farther

than the 4 Sandford case; that he must accept as final and swallow the bitter dose. How preposterous a finding is this.

This very Court decided in the case of Hutchinson vs, Stadler, 85 A. D. 424, a proposition on a matter of foreign corporations, and again another case, 147 A. D. 881; and then reversed itself in the case of DeRaismes v. United States Lithographing Co., 161 A. D. 781; and because an attorney entertained a different view would it be a fraudulent enterprise if he persisted, in spite of these cases, upon a different theory, for certainly the Court of Apeals in the case of the German American Coffee Co. vs. Diehl, 216 N. Y. p. 57, gave a different view and decision than this Court, and reversed this Court. So far as I am aware it has never been considered fraudulent before because one case had been decided one way, that an attorney was barred from proceeding upon a different or similar state of facts to reverse the doctrine laid down by the Courts. And I again reiterate that there is nothing in the evidence, or in any paper produced upon the evidence which will state or show that I have ever had one dollar for the purpose of bringing a suit against Trinity. There has to be something more than the mere statement of this Referee that I am engaged in a fraudulent enterprise to make it so, and it certainly is unquestionable proof that his purpose in making this report is to serve the opposing interests, for it is replete with bias, insincerity, and untruthfulness, and not in keeping with his oath of office whereby he had sworn to uphold the honor and integrity of the law. Perhaps the sanctity of that oath is considered as lightly by him as it is by the religious corporation who started these proceedings.

Appropos of the matter of Sprague, I want to state, that I did not call him for the purpose Mr. Freedman imagines I did, for he has no proof of the statement of why I called him in his opinion.

I called Mr. Sprague to prove that he had taken money for an investigation into the Edwards matter, not the Bogardus matter mind you, and that he had received money for searching the London records as to the Edwards matter, and that he was still practicing law. He is not disbarred. It is significant that the Referee refers to the fact that Mr. Sprague went for information to the title companies — perhaps the very title companies who are insuring titles on this very property — for information as to whether Trinity's title was good, and found out that it was unquestioned. Well and good, but remember that Mr. Sprague did make an investigation, and that he did take money for it. I want to correct this Referee and to state that I decidedly object to the constructions which he is continually placing upon what I do. He states that I heard of Mr. Sprague in the course of the examination of Washburn, and that was why I called him. He states I took the risk of calling him. Both this Referee and Mr. Jackson saw, for you know the size of the Judge's room does not admit of you handling anything without all sides seeing it, that I was examining Mr. Sprague from a copy of his report to his client, which had been sent to me by his client, or rather sent to Mrs. Buys by his client to turn over to me, and he certainly had no possible right in the world to put this construction upon my calling Mr. Sprague, for my questions did not bear out this statement. As to Washburn receiving money for his investigation please note Exhibit C to his client "At your request and at your expense I went to New York early this month and spent several days investigating, etc."

* * * * * * * * * *

I do not want this fact to be lost sight of, because it was to be the crusial test — Calligari coming to me and asking me for that kind of a contract, after having stated that the would-be investor was a Wall Street Broker, and it was for the man to show to his lawyer, and drawing that contract as I did leaving out what he had asked for as to the return on the money — I left the door open for his return, and the fact that he did return for the contract to be redrawn, confirmed me in the opinion that the whole thing was a trap, a frame up. I had stated to him when he said Wall Street Broker; that he was in Trinity's nest, as the evidence of the two people who were present at that interview will show.

And when this Referee says that my statement as to the supplemental agreement is in contradiction to what I said before the Grievance Committee (fol. 133) he must remember that no one will ever know what was truly said before that Grievance Committee, because the man is dead that should have been made to tell the truth, and the doctored minutes should hardly be taken as a basis for any such statement, because every third or fourth word is an erasure.

Still I will say this, and there are three people who know this to be true. The deal was called off after Calligari left my place Tuesday, October 13th, 1914, as the stenographic minutes of Calligari's conversation with me will show (Exhibit JJ). When I told Calligari that the deal would have to be closed there, and that the man could have as many as he liked there and I would have who I liked, Calligari left there with a paper, and this Referee cannot state that I at no time gave a supplemental agreement to Calligari because he does not know, but gentlemen, when Calligari left that house with that paper of which he knew I had a duplicate signed by him, he knew that I never expected him to come back again. I knew that when he got to the others and showed them that paper, I had called their hand, and that they had no other alternative than to trap me another way, and that was to tell Calligari to call me and ask me if his man should go to Walker. If I had said no, I guess they had the phone fixed. Remember that I was confident it was a frame up and I answered and told him to go to Walker or anyone else he had a mind to. I thought perhaps if they went to Walker they would meet an honest man and that Walker might serve his country well enough to nab them in this beastly work. Shortly after this the deal was called off. No one knows better than Calligari, Boynton and Drake that there was another paper, and when Calligari returned to me with the contracts and tore that paper up in my presence, I wish he could come back and tell you gentlemen what I said to him. I could not produce that particular paper. Gentlemen, these men knew that I was suspecting who was back of Calligari, and everything they did was with that idea in view, just as mine was to catch them, and had they shoved me up to taking the money, the supplemental or contemporaneous agreement would have been as much for my protection as the would-be investor's for it would have shown that I would not touch his money until he knew what he was about.

Referring again to the Referee's report folios 143 and 144, please note the following:

> "The conclusion is therefore unavoidable that in drawing the said contracts and delivering it for execution under the circumstances stated to a party possessing little or no legal knowledge."

Might I ask this Court where is the proof that I delivered

these contracts for execution? A judge cannot, or is not permitted to, make promiscuous statements without a foundation for so doing, and no where in this evidence can you find a scintilla of evidence that these contracts were submitted for execution. It is one thing to draw a contract, but an entirely separate and distinct thing to execute it, and to execute a contract there must be a party of the first and second part, sometime a third — where was the party of the second part.

Now as to this man possessing little or no legal knowledge I shall refer this Referee and the Court to an Exhibit — Petitioner's Exhibit M, letter No. 3 — "He is an intelligent man, and is, we understand, a member of the Roumanian Bar." This letter is from Messrs. Jay & Candler to John E. Walker the Assistant United States District Attorney.

Oh, there is not very much room for doubt here as to whether this was a plot or not. Look at the exhibits, showing their activities with the Bar Association. It was Drake who directed the serving of the papers on me. It was Drake who has to escort his tool to the Bar Association, and it was Drake who had to keep after that tool until he got him before the Grievance Committee for fear he would lose him, and if a true record of that hearing had ever been made, there would have been a statement made by Calligari when he returned to the table and acknowledged that I had been suspicious from the first and that I had said it was a frame up, and had treated it as such.

I never expected to see Calligari again after he had discovered Mrs. Winterfield knew about the proceedings, and this Referee's statement at folios 144 and 145 that even if Calligari had conceived the idea that it might eventually be more profitable for him to become an informer against me, and his subsequent acts were a result of that plan, only shows that this Referee himself thinks that Calligari got money for his part in this deal.

Certainly Calligari was not working for glory or honor so profitable must have meant one thing "MONEY." Hence by this statement he is perfectly willing to reward the men who bribed Calligari, and to aid them in their undertaking.

I think instead of his summing up that the respondent has been shown to have been guilty of gross unprofessional misconduct, he should have said that there are a few lawyers around who have need to go into the laundry bag before they start crying out unprofessional conduct, not the least among which is this same Referee, for when he gives voice to the statement that it would not exonerate me, even if Calligari were found out to have done this for profit, he is certainly stating something that he ought to be ashamed as a Referee and a judge to state, for it is giving recognizance to the crime of bribery.

Now as to the Referee's conclusion about the briefs I want to state. If you will look at the evidence you will see that there were certain of the exhibits which were produced by subpoena duces tecum that I was ordered to photograph, and certain of the other exhibits of which they were to furnish me with a copy.

When I went down to the office of Trinity Corporation to see about the photographs I was told that the photographs had been made; that Mr. Nash had attended to the matter and that the photographs were at the office of the Referee. I tried to explain that I was ordered to make some photographs of the exhibits by the Referee, including the Queen Anne Grant, but all the satisfaction I got was that Mr. Nash had attended to the matter. I left there and went to the office of Mr. Jackson to see what satisfaction I could get there, and met Mr. Nash who said he knew nothing about it, and seemed surprised when I stated that they had told me at the office of Trinity Corporation that he had had the work done. I told them that I needed those photographs for my brief. Mr. Nash eventually called Mr. Jackson on the phone, whom he said was at home, and shortly thereafter Mr. Jackson came down, and he said he could do nothing in the matter; that the photographs had been made by Trinity and they were at the Referee's office.

This was in direct opposition to what Mr. Jackson had written and what he had said to me, for on the day when the photographs were ordered he agreed to let me know what photographer he was going to use, and he did correspond with me in regard to the matter. He did not live up to his agreement, for he did not let me know either the name of the photographer, or when he was going to do the work, but notified me when the work was done that they wanted to do.

October 21st, 1916, I wrote to Mr. Jackson asking that in view of his suggestion we have the same photographer, I would appreciate it if he would make an early appointment when we could meet and take it up. On October 23rd, 1916, Mr. Jackson answered and said that he was endeavoring to arrange with Mr. Camman to have a photograph made of all the papers which were produced during the course of the examination, and he stated further that it included those which they undertook to furnish copies of, as well as those which I was to produce copies of, that he could probably have photographic reproductions made. At the end of this letter he stated

"I will let you know further whether I am successful in this proposed arrangement.

I answered this letter Oct. 25th, 1916, and told him I would await his further advices, and I did wait. Not hearing from him, however, I wrote to him October 30th, and asked him to advise me on the matter. November 1st he wrote enclosing stipulation for an adjournment of one week in which to file the briefs, and I answered this Nov. 2nd, 1916, signing the stipulation.

On November 4th, I received letter he wrote October 31st advising me that the exhibits which the petitioner was to furnish were with the Referee and subject to my inspection, but the copies which the Referee ordered they were to furnish me were not mentioned, nor were they ever furnished.

On November 4th, Jackson wrote and said that the exhibits which were with the referee included all the papers and documents which were produced by Mr. Camman, and which either they or I were to furnish, and that I could inspect them at the Referee's office.

In answer to this I wrote the letter dated November 7th, 1916, (Schedule A annexed hereto). It was after sending this letter and on November 10th, 1916, that I went to the office of Trinity and tried to get permission to make the photographs I had been offered and allowed to make by the Referee, including the Queen Anne grant, and was informed that Mr. Nash had charge of the matter, and had had the photographs made. There were fifteen exhibits which I was ordered to photograph, including the Queen Anne grant, and on November 13th, after finding out that Mr. Jackson had proceeded with his photographs without advising me as he had promised, I made arrangements with Mr. A. J. Drummond of 50 Fulton Street this city to look over the work for me, giving him a list of the photographs which had been ordered by the Referee, and told him to see Mr. Camman personally if he could.

I received an answer from Mr. Drummond dated November 14th, 1916, in which he stated that Mr. Camman would not be at the Corporation office until Friday, and that he was unable to see the various documents that I mentioned so could not give me a figure. I answered this November 15th, and told him I would take up the matter, and write him further.

I wrote to Mr. Camman, November 15th, 1916, and sent it by registered mail explaining the situation to him, and asked him to communicate with me or with Mr. Drummond for the purpose of making arrangements for the taking of the photographs, and called to his mind the order of the Referee in this regard. In answer to this I received a letter from Mr. Camman on Trinity Church Corporation letter head stating:

> "Your letter of the 15th inst. is received. We have had photographs made of all the papers as directed by the Referee, and have supplied copies of the same to the Referee. We are advised that this is all that is necessary for us to do."

This letter is signed by H. H. Camman, Comptroller, and a copy is hereto annexed.

Now as to matter of whether or not they believed I was going to file a brief, and by that I mean both Mr. Jackson and Mr. Referee, I will state that they both knew that what I was fighting for was my right to photograph the documents that I have been ordered to do by this Referee.

In order that this Court can get the matter of these photographs and the brief matter straight, I append hereto copies of letter sent to and received from the prosecuting attorney, dated respectively, November 7th, December 6th and 8th; also copy of letter written to the Referee, October 8th and November 28th, 1916. By these letters I think the Court will see that the prosecuting attorney fooled me in thinking he was going to co-operate with me to have the photographs made, and after keeping me waiting, popped up with a letter that they had been already made, and that I would have the wonderful privilege of looking at them in the Referee's office. This in spite of the fact that I had been ordered to make these photographs by the Referee, as you will see by the Referee's report, for he complains that I have not done so.

My letter to the Referee asking him to set a time when we could have the matter thrashed out, got no response from him.

Will this Court read that letter to the Referee, and then decide whether the Referee treated me fairly and has honestly reported this matter. The Referee did not scruple to communicate with the prosecuting attorney, but from no source was a date given to me when I could be heard. Not alone this, the Referee told me in his own office when I was first advised that Jackson had filed copies of these photographs, that I could inspect those copies in his office. I complained that I had not been furnished copies, and that I was entitled to copies of all the evidence and exhibits.

They do not stop at simply ignoring the Referee's orders; they furnish copies of what they want to, and what they don't want to, they don't.

When I demanded that I be allowed to photograph the Queen Anne grant as ordered on the minutes, by this Referee, their attitude is, go hang for it. I submit the Referee must know that they have not complied, and will not let me comply with his orders to photograph the Queen Anne grant. Are they so powerful that they can do as they please?

As time prevents my proceeding further with this paper, I therefore conclude by asking this Court to hold:

First: That the contract of retainer, Exhibit 31, is a proper contract, and one that an attorney has a perfect right to accept, and that the investigation that contract calls for is highly proper, and one that any free American citizen has a right to employ an attorney to conduct for him.

Second: That an attorney accepting such retainer, is not bound to assume that the cases known as the Trinity cases represent all the facts, or the true facts, nor is he prohibited from differing with the Court in this case or in any other case; that it was highly proper for respondent to seek proofs outside of the records in these cases to ascertain if a false record had been made in those cases.

Third: That the inalienable right to investigate the public records cannot be denied in this case or any other case, in this generation or any other generation.

Fourth: That an erroneous opinion on the part of an attorney or a Judge is not grounds for disbarment.

Fifth: That there is not one scintilla of proof and the burden was upon the prosecution to show that respondent received a single penny except under the form of retainer Exhibit 31.

Sixth: That Exhibits numbers three to forty-two inclusive, each and everyone, were erroneously received in evidence, and without the foundation proof connecting me with it.

Seventh: That the proofs establish — and from their own mouths — that the conspirators Calligari, Drake, Boynton and Walker had their heads together on October 9th, some of them on October 8th, 1914, which was the day before the first contract was received by Calligari; that they had the circular described by Calligari and Jay & Candler's letter; that Calligari admitted giving me the terms he wanted in the contract; that he is a member of a Roumanian Bar (see Jay & Candler's letter); that Boynton's statement drawn on the 9th of October, stating that the deal was called off "yesterday" was sufficient proof that he was one of the conspirators; that Boynton's statement headed United States of America drawn October 9th shows the purpose for which they were together; that Calligari's statement before the Grievance Committee that he had not submitted the first contract to Mr. Boynton, the contract of October 9th, and Boynton having produced that contract (Exhibit 13) and stating that he copied on the 9th, and Calligari returning to me on October 10th for the second contract to be drawn with the $300,000 clause, and that contract turning up at the Bar Association, is sufficient proof that this was a conspiracy in which they were going to use the United States of America against Willis T. Gridley.

Eighth: That the admission of the minutes of the Grievance Committee, testified to by one witness as a doctored record, and by another expert as replete with interlineations, arasures and substitutions, which he stated could not have been done at the time the notes were taken, was erroneous and unprecedented, and connect the Bar Association with the falsification of the records in this case.

Ninth: That Washburn's report to his client Exhibit G, in which he failed to mention any demand for money, when he reported as to what transpired with me, stamps his testimony that I asked him for a fee as false, and the statement of an unscrupulous man.

Tenth: That Exhibit LL, page 989, fixes the time when the first contract was sent back to me, and that the testimony given in regard to exhibit thirty-five was false, and

that these conspirators had had their heads together two days before schooling their stool pidgeon as to what demands to make or provisions to require in the contract.

Eleventh: That all the facts, particularly the fact that no one, Drake, Boynton, Walker, Bar Association, or anyone else, sought to ascertain, or would permit or aid me to ascertain, that there was a real injured party, establishes that they all know that that is one subject that must not be delved into, and Calligari's absence proves it, and that they are in court here without an aggrieved complaint, and with unclean hands.

Respondent respectfully annexes hereto a copy of the papers presented October 13th, 1916, to this court for an order to show cause to remove the Referee from further proceeding in this matter, in order that the same may receive the attention of the full court, and for the further reason that respondent for want of time, has been unable to deal with the matters therein set forth.

WHEREFORE respondent asks that this proceeding be dismissed, as without merit and unprecedented.

Dated New York, February 23, 1917.

Respectfully submitted,

Respondent in Person.

1268 East 10th Street,
Brooklyn, New York.

October 8th, 1916.

Hon. John J. Freedman,
No. 2 Wall Street,
New York City.

Dear Sir:

On September 22nd I was able to procure the final minutes of the hearing in my matter. I note that on May 18th, 1916, when this matter was adjourned to October 16th, 1916, you directed that the matter "proceed from day to day until the close of the evidence." As the time approaches for these hearings, I realizing my condition of health, and, as you know, the fact that I have been ill for several years, affidavits in support of which I can produce, I feel it my duty to say that I am very sure I cannot undergo the strain of these hearings if carried on from day to day.

I am writing therefore, with a view of ascertaining if this condition can be changed, and trust you will let me hear from you as soon as possible. Of course, I feel confident that you will not penalize me for my ill-health.

Very truly yours,

W. T. Gridley.

1268 East 10th Street,
Brooklyn, New York.

Nov. 28, 1916.

Hon. John J. Freedman,
874 St. Nicolas Avenue,
New York City.

Dear Sir:

Upon the close of the evidence October 20th, 1916, in the disbarment proceedings pending against me before you, I understood you to state that each side might have two weeks to file a brief; file it with you, and serve a copy on the other side; that then each side might have a week after that to reply; that, that would give each side three weeks. Up to the present writing I have not been served with any brief on behalf of the prosecuting attorney, if he may be termed a prosecutor, although I understand that instead of serving me has has served you. Before the expiration of this time Mr. Jackson presented me with a stipulation extending this time from November 3rd to November 10th, and extending the time from November 17th when the case would be finally submitted to you. Later at my request the time was further extended for one week, and the time to submit the case was extended to November 24th, 1916.

On November 24th, I appeared at your office at two P. M. having reached the conclusion that you intended to hear arguments upon the submission, which is frequent in references where the parties do not agree to submit without argument, and as cases are submitted to juries, but you were not present, and I was informed by Mr. Linden that you were not expected at your office; that your next hearing was set down for December 6th. He said he could not tell whether you would be in the office or not in the meantime. Upon this occasion I met Mr. Jackson (I had previously notified him that I would be at your office at 2 P. M. on November 24th) and indicated that I thought you were expecting us upon this submission to make some argument. He made an insulting domineering remark to me, and in substance said that you were not going to hear any argument, that arguments were not permissible, and used very slurring sarcastic language entirely uncalled for by what was said by me, to the effect that there were lots of things I did not know. This brings up the question as to whether you will hear me and will entertain arguments upon the submission of this matter. I respectfully ask the privilege of being heard orally.

As Mr. Jackson further remarked in his uncalled for sneering way that he didn't believe I had a brief, I have this to say ——— I have omitted to file my brief for the very reason that I have been unable to get the exhibits which you ordered to be furnished to me, and which the other side agreed that I should have. You directed that I might photograph certain exhibits upon the hearing of the testimony given by Mr. Herbert Camman on October 18th, 1916, I refer your Honor to a few passages of that testimony which will bear out this statement, and which I content admit of no possible misunderstanding.

(Page 10, Mr. Cammon's testimony) We will produce the copies at the next hearing.

(Page 13) Mr. Gridley: Do you have any objections to a photograph being made of that.

Mr. Nash: Not if you give us one.

Mr. Gridley: We will be very glad to do that.

Mr. Nash: I guess you would be glad to have some prints of it, would you not, Mr. Cammon?

(Page 23) Q. You will furnish a copy of this lease.

Mr. Nash: I suppose we will do that, * * *

Mr. Gridley: If you don't care to furnish a copy you can have the witness read it on the record.

* * * * * * * *

Mr. Jackson (To Mr. Gridley) Then there is a copy of the charter and a copy of the lease to be furnished.

(Page 25) Mr. Jackson: Mr. Cammon can Mr. Gridley come to your office and photograph that paper some day?

The Witness: I don't care to have them photographed unless it is absolutely necessary and the Judge orders I have got to do it.

THE REFEREE: You ought to allow Mr. Gridley to make a photograph copy at his own expense, and in the presence of a representative of your corporation.

Mr. Jackson: And of course under circumstances that will be entirely safe.

Mr. Gridley: Will you furnish me a copy of that? I presume that was made from the original.

* * * * * * * *

Mr. Jackson: You wish that instead of a photograph?

Mr. Gridley: If I want a photograph I will decide.

(Page 30) Mr. Gridley: You are going to furnish copies of all these papers?

Mr. Jackson: All that you have asked for.

(Page 32) Mr. Jackson: I don't see what materiality if your Honor please, a lease by Trinity Church even assuming, etc. * * *

THE REFEREE: Mr. Gridley calls for it and it ought to be made at his expense.

(Page 33) Mr. Jackson: Would you prefer to have it read now or a copy made in your office?

The Witness: I should rather have a copy made because I don't want to handle it more than absolutely necessary.

Mr. Jackson: Is that agreeable?

Mr. Gridley: It is agreeable.

Mr. Jackson: Have you made a note of those which we said we would make copies of?

(Page 35) Mr. Gridley: You are going to furnish a copy, a copy of this Mr. Jackson?

Mr. Jackson: No, I did not suppose that you would ask to have the description read if you wanted a copy.

(Page 36) Mr. Gridley: I will leave it to Counsel to say whether he will furnish me with a copy or read the entire instrument.

Mr. Jackson: Which do you prefer Mr. Cammon?

The Witness: I certainly do not want to read it.

Mr. Jackson: You can have a copy.

(Page 49) Will you furnish a copy (By Mr. Gridley).

Mr. Jackson: I think that would be preferable would it not Mr. Cammon.

The Witness: Yes.

(Page 54) The Referee: (To Mr. Jackson) Will you furnish a copy?

Mr. Jackson: All right, we will furnish a copy.

Q. What is the date of that? Is Mr. Gridley going to pay for these copies? There are maps and everything else, and it is to be quite an item.

The Referee: If Mr. Gridley wants a copy he ought to pay for it.

Mr. Gridley: I will have photographic copies made that will be cheaper.

The Referee: At your expense and in the presence of a representative of the corporation.

Mr. Jackson: These papers that have been referred to will be photographed by Mr. Gridley, I understand now, and Mr. Cammon is relieved from the responsibility.

* * * * * * * *

The Referee: Now if Mr. Gridley wants any more copies which are only cumulative, he either ought to pay for the photographs, or pay for the copies being made.

(Page 56) Mr. Jackson: What is the ruling on the Leonard Lispenard Lease?

The Referee: A copy may be made by Mr. Gridley or a photograph copy, at his expense.

(Page 2 Case Testimony) (Mr. Gridley: While I am having photographic copies made, will you also consent that I have a photographic copy of Queen Anne Grant, and that will settle the signature question? I know the Judge is very anxious to have this thing proceed.

Mr. Jackson: So far as I am concerned, I am entirely agreeable if your Honor thinks that proper.

The Referee: It may be done.

(Page 10) The same ruling as to copies of this lease? (By Mr. Gridley.)

The Referee: Yes.

In connection with these photographic copies I want to add that I have made diligent efforts to be allowed to photograph these exhibits, and while I understand that Mr. Jackson has filed sensitized paper copies and a blue print of some of these exhibits, still the photograph of the Queen Anne Grant has not been made — in violation of your direction in the premises.

Following the hearing at which you ordered and directed these copies and photograph copies to be made, Mr. Jackson wrote me that he was making some inquiries concerning the cost of photographs, and the cost of photographic reproductions of these exhibits, and whether they could be taken directly on sensitized paper or not. To this I in no way acquiesced, but demanded my right to be present at the time the photographic copies were made. Not hearing from Mr. Jackson in answer to my letter I wrote him again and finally, on November 4th, received advices that he had gone ahead and had the sensitized paper copies made in my absence, and that the copies had been filed with you and were subject to my inspection. This came to me as a sort of a surprise, and it seemed to me a piece of high-handed assumption on his part, and an apparent attempt to violate your directions and orders, and to deny me my right, as contained in your directions and orders to photograph some of these exhibits, to which I will not submit without protest. In this regard I want to say that immediately upon receipt of this letter of Nov. 4th, called at your office on November 6th, and found that the Queen Anne Grant exhibit had not been produced, although the evidence expressly permits and directs that I shall have the privilege of photographing this instrument which they offered in evidence. On this occasion, November 6th, I called Mr. Jackson on the telephone from your office, and asked him if he had had copies made of these exhibits for me, and he told me that he did not know whether more than one copy had been made; that he did not expect a copy; that if I wanted a copy to apply to Trinity for it. Following this I had some correspondence with Mr. Jackson with the result that on November 10th I decided to find out whether I could have these photographs or not and I went down to Trinity's office, 167 Fulton Street, and there met a gentleman who would not give me his name, and who, before the interview closed, called in Mr. Foster, and both of these gentlemen informed me that Mr. Nash had charge of this matter for Trinity Church, and Mr. Foster said he went with Mr. Nash when the photographs were made, and that I would have to see Mr. Nash if I wanted copies as he had entire charge of the matter. I immediately left Trinity's office and crossed the Street and called Mr. Nash on the phone, and asked him for an interview at once, which he consented to. I went down to Mr. Nash's office, and repeated what I had learned. Mr. Nash claimed he knew nothing about it. He said Mr. Jackson had entire charge of the matter, and that I would have to see him. He called Mr. Jackson's house on the phone, and I learned that Mr. Jackson was on the way to the office, and

at his suggestion I waited for Mr. Jackson. I saw Mr. Jackson, and I took up the question of the photographs as to whether he had had copies made for me as by your order he should have done, and I cited him to parts of the testimony, by which I contend I was entitled to copies of these exhibits; I also told him that if I had had any doubt about being furnished with copies of these exhibits, or being able to obtain them I would have had them read at length upon the record, to which he responded "You would not have been allowed" from which one can gather but one interpretation, that he is imagining he is the Director General of this whole proceeding. He gave me to understand that I would not be furnished with photographic copies of these exhibits.

Following this I immediately sent a registered letter to Mr. Camman, personally calling his attention to your orders and directions in this matter, and received the following reply:

OFFICE OF THE CORPORATION OF TRINITY CHURCH
No. 187 Fulton Street,
Cor. Church St., New York.

Nov. 17, 1916

Mr. W. T. Gridley,
1268 East 10th Street,
Brooklyn, N. Y.

Dear Sir:

Your letter of the 15th inst. is received. We have had photographs made of all, the papers as directed by the Referee, and have supplied copies of the same to the Referee. We are advised that this is all that is necessary for us to do.

Yours truly,
H. H. CAMMAN,
Comptroller.

This reply tells you what Mr. Jackson claims are my rights under your orders, how far I can go, and what I can have. It would lead one to suppose that he thinks a party to a proceeding is not entitled to all the evidence and all the proofs introduced into a case. I refer to this matter to explain why I have not filed my brief, and why I expected to bring this to your Honor's attention on November 24th the day fixed for the submission of this case.

In view of the foregoing I wish to bring on a motion if your Honor will entertain it—to reopen this case, and to compel this witness, under Sections 1018, 2266, to 2281 inclusive, to obey your directions and orders in the premises. Will you therefore kindly fix a day when it will be convenient for you to be at your office to entertain such a motion, allowing me if you please about three days to finish the preparation of my motion papers.

Very truly yours,
W. T. Gridley.

Law Offices
Of
TAYLOR, JACKSON, BROPHY & NASH
30 Pine Street,
New York

Howard Taylor
Charles B. Brophy
John G. Jackson
Stephen P. Nash
Cable Address "Summons"
Telephone 14 John

December 6th, 1916.

Willis T. Gridley, Esq.
No. 1268 East 10th Street,
Brooklyn, New York.

Dear Sir:—

Pursuant to your notice to Judge Freedman, I attended before him at two o'clock to-day, understanding that you intended then to make an application to reopen your case. As neither you nor any one in your behalf appeared during the half hour I waited, I presume that your application is now abandoned.

I remain,

Yours very truly,
JOHN G. JACKSON
E.

1268 East 10th Street,
Brooklyn, New York.

December 8th, 1916.

John G. Jackson, Esq.,
Taylor, Jackson, Brophy & Nash,
30 Pine Street,
New York City.

Dear Sir:

I received your letter of the 5th inst. last night. By what process of reasoning you arrived at the presumption that my application is to be abandoned is beyond my comprehension.

I wrote to Judge Freedman November 28th, and my only reference to December 6th in this letter was as follows:

> "On November 24th I appeared at your office at two P. M. having reached the conclusion that you intended to hear arguments upon the submission, which is frequent in references where the parties do not agree to submit without argument, and as cases are submitted to juries, but you were not present, and I was informed by Mr. Linden that you were not expected at your office, that your next hearing was set down for December 6th. He said he could not tell whether you would be in your office or not in the meantime."

Why should I assume, knowing he had other engagements or hearings for that day that he would entertain this matter?

In this selfsame letter to Judge Freedman, I concluded thusly:

> "In view of the foregoing I wish to bring on a motion if your Honor will entertain it—to reopen this case, and to compel this witness, under Sections 1018, 2266 to 2281 inclusive, to obey your directions and orders in the premises. **Will you therefore kindly fix a day when it will be convenient for you to be at your office to entertain such a motion, allowing me if you please about three days to finish the preparation of my motion papers.**

Is it not strange that you should have heard from Judge Freedman and I receive no notification whatsoever or acknowledgment of this letter, except through you? I shall only be too glad to appear before Judge Freedman upon a day fixed by him, upon receipt of notice from him.

Very truly yours,
W. T. Gridley

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

IN THE MATTER
—OF—
WILLIS T. GRIDLEY,
An Attorney.

Upon the petition and answer of the respondent, and the order of this court, dated December 10th, 1915, appointing John J. Freedman, Esq., Referee to take testimony and to report the same with his opinion thereon to this court, and upon the annexed affidavit of Willis T. Gridley, verified October 13th, 1916, and the affidavits of Samuel M. Stump and Frank S. Knicely, each verified October 10th, 1916, and upon the evidence taken before the said referee, pursuant to said order,

NOW upon motion of Willis T. Gridley, the respondent herein, it is

ORDERED that the petitioners show cause at a stated term of this court for the hearing of motion, appointed to be held at the Appellate Division Court House, corner of Twenty-fifth Street and Madison Avenue, Borough of Manhattan, City of New York, on the 20th day of October, 1916, at ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, why an order should not be made herein removing John J. Freedman, Esq., Official Referee appointed herein by order of this court dated December 10th, 1915, and quashing the proceeding on the ground that it is without merit and framed up litigation for which this court should not be used, and for such other and further relief as may be just in the premises and it is further

ORDERED that all further proceedings herein be stayed until the hearing and determination of this motion; and it is further

ORDERED that service of a copy of this order and the moving papers upon which this order is granted (except the minutes and evidence taken before said referee service of which is hereby dispensed with) upon petitioner's attorney, on or before the 16th day of October, 1916, shall be deemed good and sufficient service hereof; and it is further

ORDERED that the Referee, John J. Freedman, Esq., file with the clerk of this court for its use upon the argument of this motion, the original copy of the evidence taken before him herein.

Dated, New York, October 13th, 1916.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT.

IN THE MATTER
—of—
WILLIS T. GRIDLEY,
An Attorney.

STATE OF NEW YORK }
COUNTY OF KINGS } ss.

WILLIS T. GRIDLEY being duly sworn deposes and says:

That he is the respondent in the above entitled proceedings brought for the purpose of procuring respondent's disbarment.

Respondent here refers to and makes a part hereof the petition and answer of the respondent on file with the Clerk of this Court, and an order duly made by this Court on the 10th day of December, 1915, directing that John J. Freedman, Esq., Official Referee be appointed Referee in these proceedings, to take testimony in regard to the charges, and to report the same, with his opinion thereon, to this court.

Respondent states that following the making of said order hearings have been had before the said Referee, and some 743 pages of testimony have been taken, reference to which testimony is here made, and the same is made a part hereof as fully as though set forth at length herein, the original transcribed copy of which is in the possession of the said Referee, and a manifold copy thereof is in the possession of the attorney for the petitioner, and a like copy is in the possession of respondent.

The object of this motion is for an order, removing the said Referee, and restraining him from proceeding further in this matter, on the ground, as the record will show, that he is unfair, prejudiced, biased, antagonistic, and that he is apparently possessed of a preconceived opinion, and that his conduct throughout the hearings has been such as to force the conclusion that he is subservient to the interests which are back of this proceeding, and that it is farcical to endeavor to proceed further before him; that his rulings upon objections, as the record will show, have been apparently erroneous as to evidence, and justify the conclusion that he is permitting his office to be used to assist the interests back of this prosecution, and indicate a total disregard of his oath of office.

Time forbids me taking up in minute detail all the matters which I charge establish the unfairness of this Referee, but I shall merely refer to a sufficient number to enable this Court to judge for itself as to the conduct of this Referee during the hearings already had before him in this matter.

The first witness called to the stand was John N. Drake. His evidence starts on page 10 of the testimony. You will here perceive the permissive attitude of the Referee, loading up the record and placing the responsibility on my shoulders for everything that anyone has ever done or thought of doing in connection with the questions involved in this controversy. My objections mattered not at all; they were absolutely disregarded. The prosecution was allowed to put anything and everything upon the record they had a mind to, without even a particle of evidence supporting it to connect it with me in the slightest particular. It would appear here that the Referee is obsessed with the idea that because a hundred years ago somebody had something to do with the matter of the Trinity Church property, it would preclude anyone a hundred years from now from investigating anything in regard to it and would result in their prosecution if they did so. One might just as well forbid the publication and sale of historical works of a hundred years ago on the theory that any knowledge must be imbibed hereditarily. What are our public records for?

As a further sample of the Referee's attitude towards respondent I would refer to page 12 of the testimony. Mr. Jackson, the prosecuting attorney, asks Mr. Drake to state his familiarity and the grounds of his familiarity with these claims relating to this land which he has described. I objected to the question as immaterial, irrelevant, but what became of my objections? They were of course overruled. Is it at issue in this proceeding whether Drake is familiar with these claims or not. It would seem from the petition that the issue here is as to what I have done that is wrong, therefore what can it matter whether Drake

is familiar or unfamiliar with the claims of the interested parties. Drake's answer to Mr. Jackson's question starting on page 12 consumes a page and a half starting with "As an attorney at law, I am familiar and have been for many years familiar with a line of reported cases in the reports of the Courts of Record of the State of New York" and so on—Note immediately following (page 14) my motion to strike out this answer as irrelevant and immaterial so far as the issues here are concerned. The Referee denied my motion, and then on this same page—over my objection—Mr. Drake recites all the reported cases with which he is familiar—The Bogardus case, the Humbert case, the Van-Giesen case, and the case of the People against Trinity. They are material here, quite material when my adversaries ask the question, but turn the leaves to page 154 of the testimony, and respondent asks Drake this question

> "Q. There is not any of these cases, except the Bogardus case 4 Sanford in which there was any evidence taken. All the other cases turned on question of pleading, didn't they, demurrers and the like?"
> MR. JACKSON: Can't we get away from the cases?
>
> A. They speak for themselves.
> THE REFEREE (To Mr. Gridley): If you ask another such question I will close the cross-examination because the reports show for themselves what questions were litigated.
> MR. GRIDLEY: I take an exception."

Still pursuing this man Drake's familiarity, and preliminary to questions regarding the applications of the statutes that were litigated in the Bogardus case, and involved in the other cases, respondent asked (page 159)

> "Can you name one statute or specify one statute that there are not a dozen different court opinions construing?
> MR. JACKSON: Do we have to cross-examine on this?
> THE REFEREE: The examination is closed (to witness) you may retire.
> MR. GRIDLEY: I take an exception."

On page 14 of the testimony the Referee makes the remark that the petitioner cannot prove everything at once, but he is very decided, after Drake has been allowed to characterize himself as a competent witness to testify as to the question involved in these reported cases, that the respondent must do it all at once.

This is merely cited as one of the instances of unfairness—the point is that the witness's familiarity with the reported cases was material when testified to for the opposing side, and was given over my objection, but when I brought that material point into play and sought to bring that familiarity to task, then it was necessary to throw the mantle of protection around Mr. Drake, and the Referee removed him from the stand to prevent my further cross-examination. Does this show an unbiased frame of mind, does it show a spirit of fairness; does this show an effort to afford that protection which it is said this Court is bound to give to attorneys in matters of this nature?

Respondent further calls the Court's attention to Mr. Jackson's question at the top of page 17, in which he asks Drake to detail what he found on his western trip in 1912 about Mr. Gridley's activities, etc. Please note respondent's objection, the answer, and then the motion to strike out. Look at this record upon this question from pages 17 to 19, and note how this witness refers to numbers of actions brought against Trinity Church; how he characterizes them as fictitious, bogus actions, but nowhere does he state that I am connected with any of these actions or bogus suits. I say that Drake knew when he was testifying as to his convictions, and to Jay & Candler's convictions, that he was not furnishing competent evidence, the best evidence; yet when I asked to have this stricken out, where does the Referee stand on that proposition? Knowing that I am not connected with it in any way he states that he must allow the other side to commence somewhere. This would seem a rather poor excuse to be made for filling up the record with transactions wholly foreign to any matters connected with me. Drake knew when he was testifying that I had nothing to do with the Mary Fonda suit, the Henry D. Stone suit or the Delemater suit against Trinity Church.

Now on page 20 of the record Drake says that he visited a lady by the name of Mrs. Smith in Louisville, Illinois, and the Referee over my objection allows this witness to testify as to conversations between Mrs. Smith and himself. What more flagrant transgression of the rules of evidence can be asked for in order to show that this Referee has no respect for his oath of office in dealing with matters of this description. What right had the Referee to allow Drake to testify as to what circular letters he found with Mrs. Smith without Drake being able to show that Mrs. Smith obtained them from me. Drake and the Bar Association attorneys knew how to get Mrs. Smith's testimony, and the burden should not be placed upon me to contradict Drake's testimony. Not only does this Referee allow Drake to go rambling on and tell of conversations he had with Mrs. Smith, and detail certain letters he obtained from her, but he adds insult to injury by allowing him to further testify as to conversations he had with one Boyle; to testify as to papers he saw in Boyle's hands, characterizing them as the same circular letters, and still he did not present a word of proof that Boyle received these letters from me. But later on note how the Referee receives my attempt to get this man Boyle's address (see page 158 of the testimony):

> "Q. Do you know his street address? A. Did you ever go into a mining camp?"
> Q. Is that what it is? A. Yes.
> THE REFEREE: Has that not been referred to once before this afternoon?
> MR. GRIDLEY: Yes, but not as to the address.
> THE REFEREE (to Mr. Gridley): If you ask another question by way of repetition I will close the cross-examination."

I submit that this is a fair sample of the treatment I have received at the hands of this Referee. Here is a man whom Drake testifies he saw; he gives his address as Roslyn, British Columbia. Only having heard of the man once before and in view of this testimony, I would naturally want his address, intending, finances permitting, to take his deposition, and show that this man Drake is a deliberate falsifier; that Boyle never showed him any letter from me in connection with the matters he testified to, and attempts to have the Court believe he referred to. How was I to know, without inquiring, that the address was merely Roslyn, British Columbia?

Now as to Drake's claim that on his trip in 1912 Mrs. Smith told him that she was corresponding with me, or that in substance. After this hearing I wrote to Mrs. Smith making inquiry of her and received the following answer:

Louisville, Ill.
Feb. 6th, 1916.

Mr. W. T. Gridley,
Brooklyn, N. Y.

Dear Sir: Received your letter dated Feb. 2nd yesterday. I am sending you the first letter I received from you. If this was not the first you would not be likely to give me your address. I don't know as I ever wrote to him. I wrote to some of the head men of Trinity Corporation a time or two, but all the answer I received was their year book, or a clipping from the N. Y. Herald. If it is necessary for me to come to N. Y. to help you I am willing to do so. No, they have not written to me. I did not tell Mr. Drake that I had letters from you for that was a year before I received the first letter.

Hoping to hear of your success, I remain,

Yours truly,
Mrs. Minnie S. Smith,
Louisville, Ill.

The letter of which Mrs. Smith speaks, as enclosing in the above mentioned letters is as follows:

January 27th, 1914.

Mrs. Minnie S. Smith,
R. R. 2, Box 40
Louisville, Illinois.

Dear Mrs. Smith:

I want to thank you for sending Mrs. Buys the letter you received from Mr. Fonda.

I hesitated about writing Mr. Fonda because of his age; for I feel that great allowances must be made for a man of his years—you know he is now over 85 years of age. Other information, however, has forced me to write to him, and I am enclosing you a copy of a letter I have written to him today, which is self-explanatory.

I shall appreciate it very much if you receive any further communications of like character with regard to me from him, if you will notify me, or send me same at my home address, No. 50 Hamilton Avenue, New Rochelle, New York.

Again thanking you, I am,

Very truly yours,
W. T. GRIDLEY.

Respondent wants this Court to understand, that being an upstate attorney, I had never heard of this controversy between the Bogardus heirs and Trinity Church.

* * * * * * * * * *

On page 21 Drake says "in the course of my investigation during the next two months I found many circular letters, and letters demanding or suggesting, at least, contribution—" Is this the best evidence of what these circular letters contained. He says many others. I submit that as you go through this record you will find it replete with proof that this Referee permitted them to put anything they wanted in this record as evidence, without the slightest effort on their part to connect me with it. Does the Court want any more flagrant transgression of this Referee's oath than this.

Now note on page 23 where Drake says

> "I found a letter in Mr. Boyle's possession written to him by John H. Fonda, with whose signature I was quite familiar, and that letter states—
>
> MR. GRIDLEY: I object to it as immaterial and incompetent and in no way connected with me.
>
> THE REFEREE: The witness may answer.
>
> MR. GRIDLEY: Exception.
>
> A. (Witness continuing) The letter stated that Mr. Fonda had now got a new attorney, that the old suit which he brought has been worn out, had been dragged around and bandied about until it was worn out, and he now decided to commence a new action and get a new attorney, and this new attorney had been to him and had been paid $50. so far, and so forth, and so forth; so that when a week or two later I found—
>
> MR. GRIDLEY: I renew my motion and ask to have that answer stricken out, and it appears from the answer itself it is immaterial so far as I am concerned, and has no relevancy whatever to me or to the issue here.
>
> THE REFEREE: Denied.
>
> MR. GRIDLEY: Exception.

* * * * * * * * * *

The letter Drake states he found in Boyle's possession he testified was written by Mr. Fonda. He was not required to produce the letter, or show its loss. Drake knows and that Referee knows that he has no right to testify to its contents. My motion to strike this out was denied, and I can say frankly that if I am to be tried by this man who is unable to show any respect for his position or for his oath of office I shall do so protesting with every fibre of my being against any such injustice. My sheepskin is just as dear to me, and I will venture to guess I have taken just as good care of it as this man has, and I will venture to say that when he was at respondent's age he would not hazard his skin, or submit himself to any such treatment as he is according me.

* * * * * * * * * *

Do you think for one minute this man was judging impartially, do you think for a minute he was according me the treatment he himself would want to receive were he in my place, or do you think his mind was entirely blank as to any rights I might happen to have, he being entirely taken up with the fact that he had but the one trick to perform, and that was to allow them the greatest possible latitude, and the respondent the least. The dastardly part of this Referee's attitude is here pictured. Nothing that Drake, their witness, could say in the way of characterization or deduction was a waste of time, but when respondent was questioning him as to the foundation for such characterization or impression, with a due regard for the fact that there would be page after page of this characterization and impression on the record, then he is told that it would be a waste of time, that all respondent will have to do is to call the attention of the Referee to it. A mighty fine chance respondent has to calling this Referee's attention to anything. I have but to make an objection, I have but to seek to call the Court's attention to even the slightest rule of evidence and I am immediately ruled down; in fact even the most casual observer can see that this is plainly a case of where I am to be seen but not heard.

By way of illustration as to the "be seen and not heard" part of these proceedings, I wish to call the Court's attention to page 350 of the record, where one of their witnesses presented one of Fonda's circulars. Respondent made the statement that the prosecuting attorney had tried to make the Court believe that respondent had had something to do with the circularizing, and that the circular presented by the witness would show the Court that even at the time No. 12 was sent out respondent has no connection with the circularizing, and they had already admitted No. 14—

Mr. Jackson, the prosecuting attorney, made this statement:

> "On the basis of Mr. Gridley's statement that he that nothing to do with it, and had no knowledge of it, it is purely objectionable, and I object to it on that ground."

Did that Referee then state that Mr. Gridley had made the same objection to the admission of all the other circulars and that therefore they should be excluded? Oh, no! Nothing like that. Mr. Referee answered respondent "If you insist upon it I will take it for what it may be worth." On page 429, 430 and 431 I made motion to strike out these different circulars on the ground that there no evidence had been introduced to connect me with them, as charged in the petition, but the Referee's attitude is then plainly shown, comments by me are unnecessary, for the record will speak for itself. What the law and rules of evidence are as to the admission of evidence I contend never interested this Referee a particle.

The Court's attention is now called to the record, pages 62 and 63, John E. Walker, Assistant United States District Attorney being the witness, respecting the admission of petitioner's exhibit No. 12, being the indictment of Mr. Fonda and Mr. Good. The Court will note on pages 77 and 78, testimony by Walker respecting the issues raised by the Fonda indictment:

> "Q. The title to Trinity Church property was established on that trial by the Government? A. It was not involved; it couldn't be established.
>
> Q. Was any evidence offered in support of it? A. Yes, the old so-called Queen Anne grant of seventeen hundred and something, the early part of the eighteenth century, was physically produced in court and admitted in evidence.
>
> Q. Was any evidence offered to attack the title by the defendants or either of them? A. I don't think I would go that far; that was not the issue; whether Trinity had title or didn't have title; it was whether the statements, those representations were false and misleading."

* * * * * * * * * *

Certain charges are made in this petition, and the question is—What have I done, what have I said—what acts of mine can they prove to support those charges? Apparently, according to this Referee, the fact that some cases have been decided, and this indictment was brought against Fonda and I defended it, would preclude me from entertaining any different views or even investigating the merits of these decisions. No more preposterous proposition could be set forth. How long has it been a matter of common knowledge by the Bar that even the Courts cannot agree upon the construction and application of Section 829 of the Code? This is merely one instance. Can it be possible that because there was a case tried a hundred years or more ago, people of this generation cannot inquire for their own information as to the merit or demerit of the decision rendered in that case; cannot ascertain whether or not the true facts were brought out before the Court; whether perjured testimony was used and fostered upon the Court obtain a given result, i. e., to find out whether this was a "friendly" lawsuit, a framed up lawsuit? Is there any law that prevents the coming generation from making the same investigation and inquiry? I contend then that the admission of this indictment was clearly inadmissible as a matter of law.

* * * * * * * * * *

Has the time come when a lawyer cannot differ with the Court, or the Court's remarks in a case in which he appears? Has the time come when these remarks would preclude that lawyer from ascertaining if a different state of facts did not actually exist? Is it not true that just so long as the Court's differ in their opinions, just so long lawyer's will differ, and has it ever been held that such differences of opinion have been the basis of a disbarment proceeding. I contend that when this Referee admitted this indictment in evidence, and attempted to load up this record with parts of the Fonda and Good Trials it was tantamount to telling me that because of certain remarks by Judge Hand it should be final with me, and that an investigation was clearly out of order and improper on my part. Respondent calls the Court's attention particularly to the record from page 78, line 7, to page 82, line 2, respecting the admission of Exhibits 17 and 18. Walker testified that he could not say that I was present after the Court had granted my motion to dismiss the indictment against Mr. Fonda—therefore how could I be charged with knowledge—even for the sake of argument granting that it would preclude me forever from mentioning Trinity Church—without proof that I was present. Whether the decision in the case of Lyon v. Brown, 31 A. D. page 67 or the U. S. vs. Reading Co. (1910) 183 Fed. (C. C.) 427 is in harmony with this Referee's conclusion I leave entirely with this Court. I charge that the introduction of this evidence is upon the theory that Judge Hand had before him all the proofs, and that I am bound to forever acquiesce, and I rebel against any such doctrine. Whether Judge Hand was right or wrong upon the evidence submitted is one question, but I contend that the attempt to presume that all the evidence bearing upon this question was before him, and thereby attempting to place the burden on my shoulders that it was not, is unjustifiable, especially in the light of the witnesses own statement that Trinity's title was not at issue.

If wrong is to be presumed and predicated upon the fact that Judge Hand made some remarks, then how often would the members of our Bar — reading decision after decision, conflicting and distinguishing previous decisions —be chargeable with the same wrong.

The Court's attention is called to the manner of proving the authenticity of Exhibit 13, page 75, line 2 to page 76 line 15. I also wish to call the Court's attention to the Referee's attitude respecting the Exhibits 26, 27, and 28, beginning page 86 line 3 and ending page 92 line 12.

* * * * * * * * * *

I respectfully ask the Court to note the record covering the cross-examination of this man Walker, and the attitude of the Referee as therein disclosed pages 91 to 122, for I was conscious that this man was not telling the truth and was hiding the true fact respecting his connection with this matter. He details an interview with me on Oct 19th; he says he had two interviews with Drake within the week previous. Page 95 he speaks of one interview and says: "On the first occasion he came in and said something about that Mr. Boynton or some acquaintance, or friend of his, either directly or personally or some of his friends was **negotiating** with you. On page 97, he again speaks of the first interview with Mr. Drake, and Drake's remarks about **negotiating** to make a contract. Now if these three gentlemen had their heads together when **negotiations** were on. I had every reason to know that Walker had been testifying falsely. I contend the referee in attempting to interfere and block my cross-examination of Walker and reminding the witness as to what he had

testified to, and objecting to my persistent questioning on that line, was unprecedented.

The fact that Walker was testifying falsely is borne out by Boynton's testimony as regards this contract and the time he received it — see pages 271, 276, 277, 282, 283, 309. In this connection the Court will read with some interest Drake's report of his doings of October 9th, 1914, pages 193 and 194.

> Q. Does that book show when Mr. Drake first saw Calligari in reference to this matter A. It should. There is an entry here of October 9th, 1914, which relates to Mr. Calligari.
>
> * * * * * * * *
>
> Q. Read what it is. Is that the first entry of any interview with Mr. Boynton? A. First one I see yes.
>
> Q. Read it. A. Received message from Mr. Frank L. Boynton to the effect that Roumanian Consul in New York, Mr. Calligari, 26 Stone Stret, N. Y., had interviewed him in regard to claims of Anneke Jans' heirs, saying a Roumanian acquaintance of his was about to enter into a contract with Willis T. Gridley by which in consideration of $30,000 ($25,000) cash (to be paid at noon today) Gridley would assign ———% of all the fees he expected to receive from the heirs he represented for recovering from Trinity Church by suits and otherwise the land claimed by the heirs; that Gridley had informed the Roumanian that he would get over $300,000 in return for the $25,000 advanced which was to pay the expenses of the publication by Gridley of a book on the subject and of the action to be brought. Mr. Boynton advised Calligari to tell his client that there was no hope of success in such actions and that the claims were fraudulent, accordingly when the Roumanian met Gridley
>
> YESTERDAY
>
> afternoon by appointment to sign contract and pay over the money, the Roumanian told Gridley that he had considered it and would not pay the money. Mr. Boynton and Mr. Drake called on Mr. Walker of the United States Attorney's staff, who promised to lay the whole matter before the United States Attorney and also consult Judge Hand in the matter.

I knew that these three conspirators had their heads together while they were using the stool pigeon to negotiate a contract; that Walker was not telling the truth. From the above you will see they have the Roumanian meeting Gridley "Yesterday" which would mean the 8th, to sign contract and pay over the money, before he had consulted with Boynton, and strange to say before the contract was drawn and delivered.

On page 95 line 6 to 13 we find Drake entering in the register that he received from Mr. Boynton a copy of the proposed contract on October 10th, yet from the testimony of Boynton above referred to, Boynton says this contract was copied word for word and line for line on October 9th (pages 271-277 lines 10 and 11 and 3 and 4 respectively.) On page 283 you will find Boynton states he delivered a copy of the contract to Mr. Drake on October 9th. Now on page 270 lines 15 and 16 Boynton says he saw Walker and Drake that afternoon, meaning October 9th, on page 271 lines 15 and 16. He says he gave a copy of the contract, he copied on October 9th, to Walker, that same day, or the following day. On page 282 lines 12 and 13 he says "both of us called on Mr. Walker I think it was that day (meaning October 9th) I am pretty sure it was, and he states he could not have given him a copy of the contract at that time because the copy was not made until that afternoon. Then respondent asked Boynton "After you saw Calligari in the afternoon, when did you see Walker, and he answered (line 18) I think it was the following day or within a day or two; it was very shortly after that. Page 286 you will see that he is now not positive when he saw Walker, but on page 287 you will perceive he was present when the copy of the contract was delivered to Walker, in fact (line 22) he gave him the copy of the contract. Now on page 283 note where he states that he saw Walker only once. The Court is most familiar with the fact that a Referee's interference and calling the witness' attention to what he had previously testified to is unfair interruption and interference, and it shows where the interests of this Referee lies for the Court well knows it is quite a difficult task to wrong from the mouths of conspirators the evidence of their own plotting, especially when they are lawyers themselves.

This man Walker had the audacity on page 94 line 68 to testify that he had never in his life spoke to Mr. Boynton over the telephone, but look at what Boynton says on page 270 lines 14, 15 and 16

> "I telephoned Mr. Drake and also Mr. Walker, the United States Attorney's office, and on that afternoon I saw Mr. Walker and Mr. Drake."

Has a man any chance for his life when he is up against a gang of this description, without some latitude and non-interference from the referee? If you cannot ask a question a second time, how can you ever hope to get a witness to contradict himself.

If with the little latitude the Referee gave me, as is quite palpable from the record of these hearings I was able to do what I have done with these men, Drake, Walker, Washburn, Boynton, make them back and fill and contradict themselves as I did, what would have happened if I had been allowed to go on unhampered and not interfered with by this Referee?

The Court's attention is further called to the question asked Mr. Walker—remember gentlemen he is an assistant United States district attorney (see page 97 line 25 page 98 line 1)—Q. You were not interested in who was going to put up this $25,000? A. None of my business. Here's an intelligent public official, engaged in prosecuting criminals for the Government of the United States, who has acknowledged that he was charging a lawyer, a brother attorney, with trying to get away with $25,000, and yet he has never even taken the first step a prosecuting attorney would take, verify the statement that was made to him. Was there a reason for Mr. Walker not making the inquiry as to who this mythical $25,000 investor was? While I am on this subject I want to say to the Court that no one connected with the Bar Association, that is, the Bar Association attorney, or any member of the Grievance Committee (and I have had them each and every one on the stand) Robert W. Candler, John E. Walker, John N. Drake, Frank L. Boynton, or in fact any one of the parties so keenly interested in the fact that I might have gotten away with this $25,000, has ever ascertained or made the slightest effort to ascertain who the party was who was to invest this amount of money. Go into the office of any Prosecuting Attorney in the United States, and make a complaint against any man of his attempt to swindle a third party, and the first question the prosecuting attorney

will ask is who is the third party, and he will come pretty near to making the complaining witness produce that third party, and if this witness was called before a Grand Jury of ordinary business men, that witness would have to make good, identify the third party, and that party would be called before there would be any indictment brought. What better proof could you have than this fact to prove the want of merit to these charges; the absolute mala fides of this proceeding. Look at the attitude of the Referee upon this question. Take respondent's question on page 97, line 23, and continue down to page 99, line 9, and see the difficulty I encountered in getting the witness Walker to testify as regards the above matter. I submit that the question asked on page 97, line 23, differs materially from the questions asked on page 98, lines 11 and 14, and yet (line 17) we find this Referee excluding it on the ground it is more repetition. And nothing but absolute persistency notwithstanding the Referee's interference enabled me to get a final answer to this question (See page 99 line 9.)

Mr. Walker's testimony on page 108 to the effect that in the fall of 1915 Drake had told him this matter had been referred to Judge Freedman, is respectfully called to the Court's attention. The Court will observe from the papers on file, that the papers in this matter were not served until the latter part of November.

In further evidence of the fact that this Referee was very keen to guide the wandering mind of the witness least he might contradict himself, the Court's attention is called to the testimony of Mr. Washburn, pages 236 and 237, and mind you this witness is a lawyer, and presumably able to tell the truth, if so inclined, as follows:

> Q. Did you make the same promise to Mr. Drake?
> A. I don't recall it now if I did.
> Q. You went back, did you not, after you saw me, to see Mr. Drake.
> THE REFEREE: (To Mr. Gridley) You say he went back to see him. He said he had not seen him before.

The Court's attention is also called to pages 314 and 315 of the testimony as indicative of the feeling displayed toward me and my efforts to wring from the mouths of these witnesses the evidence of this plot.

Again the Court's attention is called to the evidence of Mr. Poulson, pages 375 to 399, and particularly to pages 396 to 398 on the question of whether respondent had completed the cross examination of the witness Poulson, who suffered a stroke of paralysis while testifying, and died a few days later and before the following hearing on April 26th, 1916. When a motion was made to strike his evidence from the record on the ground that his cross-examination had not been completed (see pages 428, 429), the Referee clearly indicated his attitude by allowing Poulson's testimony to stand, notwithstanding he knew that Poulson could not answer my questions at the previous hearing, and that I was compelled to cease my cross-examination on account of his illness. The man was obliged to be carried from the chair, and it was apparent to everyone present that he had suffered a stroke. At the time Poulson was being examined I had not had an opportunity to see his original stenographic notes. The examination of these notes discloses an appalling situation, best described by the witness James N. Kimball, whose testimony thus far given will be found in pages 732-740.

I charge that the record does not sustain the Referee in holding that the cross-examination had been concluded; that I merely suspended his examination because of his illness, and also for the purpose of giving me an opportunity to have his stenographic notes examined by an expert, with a view of calling him, if that examination proved that his notes had been doped, as respondent's answer in these proceedings charge. But here again I say the Referee is lending his office to put upon the record in this case a stenographer's notes which bear interlineations and alterations page after page, and notes which have palpably been made to agree with the transcript which he made, for which action there is no precedent. All of which establishes to my mind a wicked, dastardly plot to build up a case by the falsification of a record containing a record of statement which have never been uttered.

Respondent wishes further to state that he called as a witness a lady by the name of Mrs. Hazel Davis Rafkin, who testified to an interview she had had with the stool pigeon, Calligari, whom she stated, in substance, had told her while traveling on a subway train that he had an opportunity to make a bunch of money, but that it would get Mr. Gridley into a lot of trouble. She made the statement that he had told her this upon her promise on her word of honor not to tell it.

Now as an indication as to whether the interests of the Referee lie in doing his duty as his oath of office requires — he asked this witness in substance "and you will tell this after giving your word of honor not to?" It is not so much the question, as the derisive way in which it was asked, and the lady responded in substance "Yes, would if a man's bread and butter depended upon it.

Here is a Referee who just a few minutes before asking this witness that question has sworn her to tell the truth the whole truth and nothing but the truth so help her God, and by the question he asked, and the derisive manner in which he asked it, portrayed clearly his feelings, his annoyance at this witness telling something derogatory to the interests of my adversaries.

How can I hope for a fair trial, a fair decision or opinion, from a man who will, as this record will show, portray his favoritism towards one side, and his prejudice, bias and antagonism to the other, from a man who will show so plainly his willingness to violate the rule of evidence in every way to facilitate the needs of my adversaries?

* * * * * * * * * *

The above conditions, however, in my opinion, are bound to exist where the Referee is as old as Judge Freedman, and use whatever argument you will, you must acknowledge that when a man reaches the age of eighty-two years he is incapable of a fair reasoning and cool judgment on questions involving the Bar Association on the one hand, and one who was palpably against them, as in a matter of this kind, on the other, for his interests, his affections, his sympathies, his rulings, would be bound to be centered on that association which has been his business home for some thirty years or more. His age, his attitude, and his expressions make it very plain to anyone who would be vitally interested in what opinion he would render, that he would be incapable of a fair, unbiased and cool report in such cases. The Court of Appeals has stated that these proceedings are quasi-criminal, and that the rules of evidence must be followed, but I ask you to look over the evidence taken thus far, and I am sure that this Referee has not made the slightest attempt to respect the rules of evidence, as by his oath he is required to do.

As respondent has stated, the hearings in these proceedings were adjourned for the summer recess of this Court

owing to respondent's illness, and the next hearing is set down for October 16th, 1916. That the next motion day for the argument of motions is Friday, October 20th, 1916. For the reasons stated in the foregoing and annexed affidavits, and appearing from the evidence taken upon the hearing had herein, respondent asks for an order to show cause returnable on the next motion day of this Court, October 20th, 1916, directing the petitioners herein to show cause why the said Referee should not be removed, and this proceeding quashed for want of merit, and on the ground that it is a framed up proceeding for which this Court should not be used, and staying further hearings in this matter until the further order of this Court, together with such other and further relief as to the Court may seem just, with the costs of this motion.

That no previous application has been made for the order asked for herein.

Sworn to before me this 13th day of October, 1916.

WILLIS T. GRIDLEY.

Supreme Court of the City of New York
Appellate Division.
First Department.

In the Matter of
Willis T. Gridley, an attorney.
State of Ohio, Muskingum County, ss.

Samuel M. Stump, being first duly sworn, deposes and says that on or about the 20th day of March, 1916, he attended a hearing in the Referee's Court conducted by Judge Freedman, in the city of New York, in the disbarment proceedings against Willis T. Gridley; that he was at first denied admission to the room in which the hearing was held, but later on on the earnest solicitation of Mr. Gridley, he was admitted in the court room where the hearing was being held, and while in the court room at the hearing he heard the proceedings and had opportunity to hear what Mr. Gridley said and what the Court said to him pertaining to the case; that Mr. Gridley's conduct was always with due respect to the Court, but that the Court was at all times arbitrary, tyrannical, partial and prejudiced against Mr. Gridley, and the evidence that Mr. Gridley wishes to have placed on record was objected to by the Court on his own motion and refused admission; and that he does not believe that Mr. Gridley had a fair and impartial hearing.

Deponent further says that he attended other and further hearings in the same cause in the month of May, 1916, and that the conduct of Judge Freedman toward Mr. Gridley was of such tyrannical and arbitrary nature, that he refused to allow him to examine witnesses, and commanded him to cease asking further questions of certain witnesses, the exact language of the Court on this occasion being "you shut up;" and further deponent saith not.

SAMUEL M. STUMP.

Subcribed and sworn to before me this 9th day of October, 1916.

(Seal) H. C. WINE,
Notary Public.

Supreme Court of the City of New York
Appellate Division
First Department.

In the Matter of
Willis T. Gridley, an attorney,
State of Ohio, Muskingum County, ss.

Frank S. Knicely, being first duly sworn, deposes and says that on or about the 20th day of March, 1916, that he attended a hearing in the Referee's Court conducted by Judge Freedman, in the city of New York in the disbarment proceedings against Willis T. Gridley; that he was refused admission to the court room, but that he was only able to see and hear the proceedings in the court room from the office or room adjacent to it; that he observed the attitude of the Court toward Mr. Gridley, and also the attitude of the Court toward Mr. Jackson, counsel representing the prosecution of Mr. Gridley's case; that the attitude of the Court was antagonistic to Mr. Gridley at all times, and that it was decidedly in sympathy with Mr. Jackson, and that the Court appeared to be rather an assistant of Mr. Jackson, the prosecutor, than an impartial judge; and further deponent saith not.

FRANK S. KNICELY.

Subscribed and sworn to before me this 10th day of October, 1916.

(Seal) H. C. WINE,
Notary Public.

A Public Record.

PETITION
of
WILLIS T. GRIDLEY
to the
LEGISLATURE OF THE STATE OF NEW YORK
IN PURSUANCE OF
NEW YORK STATE CONSTITUTION, ARTICLE VI,
SECTION II.

SERVED ON THE CLERKS OF THE SENATE AND ASSEMBLY OF THE LEGISLATURE OF THE STATE OF NEW YORK, APRIL 12th, 1916.

Honored Sirs:

In placing the following facts before you, I am, perhaps, going out of the ordinary rut followed by men who find themselves in like position, who seem, invariably, to be willing to go down in the running, without raising a voice in protest, likely thinking it of no avail when they are battling against that most potential influence—"Money Power." But, being ready and willing at all time to stand for the truth of my own convictions, I desire, before allowing myself to be absolutely overwhelmed and swamped by charges which have been made against me, based upon a false affidavit, and being firmly convinced that such charges have been instigated and fostered by an avalanche of financial power, against which the weak, small voice of but a plain member of the legal profession could not possibly have had any weight, as the present situation brings itself to view, to enter a protest and to call the attention of your Honorable Body to some few facts, which cannot, after a careful reading, fail to carry some conviction that justice is unattainable when these potential influences above mentioned are involved on one side or the other, and that these monied powers in this community, have blindfolded the Goddess of Justice.

Passing, for the moment, my personal grievances, and for the purpose of convincing your Honorable Body that certain Judges of the Appellate Division of the First Department should be disqualified, I want to call your attention to some past performances which will, I think, warrant my contention that they are "as clay in the hands of the potter." I refer in this connection to the case of DeRaismes v. United states Lithograph Co. (reported 161 A. D. p. 781). The opinion in that case will speak for itself. I contend that such opinion is an insult to the intelligence of a grammar school graduate. With all due deference, I ask can justice ever be expected to flow from men who can wiggle

and twist, and write such corkscrew opinions as this one; from men who should understand the sanctity of an oath, who have taken that oath to administer our laws with justice, and with a strict regard for their oath of office, and to perform their sworn duty?

The above reported title of this case is certainly innocent enough, but let us delve into the full title to ascertain what interests were involved:

The full title of this case is as follows:

"Francis J. J. DeRaismes, on behalf of himself, and other stockholders of the United States Lithograph Company, similarly situated,
Plaintiff-Respondent,
— against —
The United States Lithograph Company, John Onwake, James M. Hutton, Ferdinand W. LaFrentz, Allan A. Ryan, Theodore Cocheu, Jr., William Ottman,
Defendant-Appellants,
— and —
Joseph Sweasey,
Defendant.

If I am rightly informed, the interests of one of the largest Surety Companies, one of the largest National Banks, and a prominent Wall Street brokerage firm are represented among the defendants to this action. Your Honorable Body needs no introduction to Mr. Allan A. Ryan, for he is known from the Atlantic to the Pacific.

Judge Ingraham's statement of the allegations of the complaint, page 787, is as follows:

> "The complaint alleges that this corporation while having upon its books an alleged surplus of $600,000 did not in fact have or make any surplus or net profits; that this apparent surplus was obtained by carrying property and accounts receivable as assets largely in excess of their actual value and in fact did not have any surplus or net profits; that the said individual defendants wilfully and negligently made and declared dividends quarterly at the rate of one and three-fourths per cent on the outstanding preferred stock of said company, payable on or about the 1st day of December, 1909, and on or about the 1st days of March, June, September and December, 1910, and on or about the 1st days of March, June and September, 1911; that such dividends in the aggregate amounted to $200,000; that the said individual defendants paid the said dividends ostensibly out of the said pretended and fictitious surplus, but did in fact wilfully and negligently and contrary to the laws and statutes of the Stock Corporation Law of the State of New York in such case made and provided, divide, withdraw and pay to the preferred stockholders of said corporation the capital stock of said corporation, and wasted and impaired the capital stock of and damaged the said corporation to the extent of about $200,000; that the payment of the said unauthorized and illegal dividends and the said dissipation and waste of the capital stock of the company has resulted in the impairment of its finances and credit, which forced the said company to place a mortgage of $1,500,000 on its property for the purpose of borrowing money with which to discharge debts for the payment of which creditors were pressing, to the said company's special damage in the sum of $100,000, and the complaint demands judgment against the individual defendants jointly and severally for $300,000, and for other and further relief. The complaint further alleges that the corporation was organized under the laws of the State of New Jersey and had an authorized capital of $3,000,000 preferred and $3,300,000 common stock; that on April 27, 1908, the corporation filed in the office of the Secretary of the State of New York a sworn copy of its charter and a statement under the corporate seal in compliance with and as required by section 16 of the General Corporation Law of the State of New York in order to enable it to do business in the State of New York; that on or about April 27th, 1908, it received from the Secretary of the State of New York, a certificate under section 15 of the General Corporation Law of the State; that since April 27, 1908, the corporation has continuously done business in the State of New York, and has maintained and still maintains offices in the City of New York; that the offices of the executive officers and the books of account of the said corporation have been, and now are in the City of New York; that the board of Directors since April 27, 1918, have held and now hold their meetings in the State of New York and that those dividends were actually declared in the State of New York. The complaint further alleges that section 30 of the General Corporation Law of the State of New Jersey (Laws of 1896, chap. 185) as amended by chapter 143 of the Laws of 1904, provides; "The directors of a corporation shall not make dividends arising from the business of such corporation, nor shall it divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of such corporation, or reduce its capital stock except as authorized by law."

Reference to the complaint shows that the relief demanded in the following paragraphs was in favor of the corporation as the statute provides:

> **First:** That the United States Lithograph Company have judgment against the defendants John Onwake, James M. Hutton, Arthur W. LaFrentz, Allan A. Ryan, Theodore Cocheu, William Ottmann and James F. Sweasey, jointly and severally for the sum of Three Hundred Thousand Dollars ($300,000) with interest on the same paid out for and on account of said dividends from the date of the respective payments of the same."
>
> **Second:** And for such other and further relief as may be just and equitable, together with the costs and disbursements of this action."

As the opinions disclose, the question involved was as to whether the court would enforce Sections 28 and 70 of the Stock Corporation Law of this State, which are as follows:

> **Section 28:** Liability of Directors for Making Unauthorized Dividends: The directors of a stock corporation shall not make dividends except from the surplus profits arising from the business of such corporation, nor divide, withdraw or in any way pay to the stockholders, or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors

under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors, at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or its creditors respectively by reason of such withdrawal, division or reduction. But this Section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the expiration of its charter; nor shall it prevent a corporation from accepting shares of its capital stock in complete or partial settlement of a debt owing to the corporation, which by the board of directors shall be deemed to be bad or doubtful."

Section 70: Liabilities of officers, directors and stockholders of foreign corporation. Except as otherwise provided in this chapter, the officers, directors and stockholders of a foreign stock corporation transacting business in this state, except monied and railroad corporation, shall be liable under the provisions of this chapter in the same manner and to the same extent as the officers, directors and stockholders of a domestic corporation, for:

1: The making of unauthorized dividends;
2: Unlawful loans to stockholders;
3: Making false certificates, reports or public notices;
4: An illegal transfer of the stock and property of such corporation when it is insolvent or its insolvence is threatened;
5: The failure to file an annual report.

Such liabilities may be enforced in the courts of this state in the same manner as similar liabilities imposed by law upon the officers, directors and stockholders of domestic corporations."

Concededly the same questions were before the Court in the case of Hutchinson vs. Stadler, 85 App. Div. 424, or substantially the same.

Note: Mr. Justice Seabury, in overruling the defendant's demurrer at Special Term, calls attention to the fact that "the allegations of the complaint are in many respects similar to those contained in the complaint, which was passed upon by the court in Hutchinson vs. Stadler, 85 App. Div. 424."

Note: McLaughlin J. in his prevailing opinion in the DeRaismes case, at page 784, says:

> "The statutes of the State of New York then in force were sections 23 and 60 of the former Stock Corporation Law (Gen. chap. 36 laws of 1892, chap. 688, Sec. 23; since amd. by laws of 1901, chap. 354; Id. Sec. 60, added by laws of 1897, chap. 384) which were substantially the same as sections 28 and 70 of the present stock Corporation Law. The court held, considering the statutes of the two States, that the action could be maintained. A majority of the court, however, was of the opinion that in the absence of a statutory provision, the directors of a corporation were not liable to the corporation for a distribution as dividend to the stockholders of the capital of the corporation so long as the payment of such dividend did not impair the power of the corporation to pay its indebtedness. This was upon the ground that the capital of a corporation belongs to its stockholders after its indebtedness is paid."

I will not dwell upon the cases declaratory of the right of the state to prohibit or permit foreign corporations to come within its borders, or the cases construing the liability of directors of domestic corporations, other than to quote from the opinion of Ingraham, J., concurred in by Clarke, J., in the case of Hovey vs. De Long Hook and Eye Co. reported 147 App. Div. 881, and decided in 1911.

At page 884:

> "I cannot agree that a foreign corporation or a resident of another State coming to this State and opening an office here for the transaction of its business is so far beyond State control that, while maintaining such an office, the State cannot control its occupancy of the office, and prescribe that while here occupying an office the corporation cannot refuse to observe the same regulations that the State imposes upon its own corporations for the benefit of their stockholders and creditors, and thus give to foreign corporations maintaining offices in this State a privilege which is not awarded to domestic corporations or exempting such foreign corporations from the same obligations that rest upon domestic corporations."

The attention of your Honorable body is particularly called to the fact that Judge Clarke, in the case of Hovey vs. De Long Hook and Eye Co. 147 App. Div. 881, commits himself irretrievable to the right of the State to impose the same obligations upon foreign corporations coming within this State to transact business, that rest upon domestic corporations. Now if such was the law in 1911, why did not Judge Clarke vote, as his oath requires him, in 1913, to enforce a constitutional law made by your Honorable Body as presented by the DeRaismes vs. U. S. Lithograph Co. case?

In the case of Hutchinson vs. Stadler (supra) decided in 1903, Judge McLaughlin concurred with Judge Ingraham; therefore, we have in the DeRaismes vs. U. S. Lithograph Co. case, Judge McLaughlin rendering an opinion diametrically opposed to that in which he concurred in the case of Hutchinson vs. Stadler (supra), two cases in which the allegations of the complaint are said to be in many respects similar, and involving the construction of two statutes which Judge McLaughlin says are substantially the same, in the case of DeRaismes vs. U. S. Lithograph Co. Why was the law as announced by this court in 1903, right or wrong, overruled by this same court in 1913?

It is but fair to note here Judge McLaughlin's remarks on page 766 of the DeRaismes case as follows:

> "What the Legislature of the State of New York has attempted to do in the sections of the statute to which reference has heretofore been made is to give a remedy by which a liability imposed by the statutes of another State, either upon stockholders or directors or officers may be enforced in the State of New York in precisely the same way and to the same extent, and no other, that it could in the State where such foreign corporation obtained its charter."

Are these remarks made in all sincerity, or are they mere subterfuge. Examine the decisions as to this same proposi-

tion made prior to the DeRaismes case, which hold directors of domestic corporations liable for the payment of unearned dividends, and with these before you, and the language of the statute that "the officers and directors * * * of a foreign corporation transacting business in this state shall be liable under the provisions of this chapter in the same manner and to the same extent as officers, directors and stockholders of a domestic corporation, etc.," and I ask you if there could be any sincere ground for Judge McLaughlin's observations as to what your Honorable body intended by the terms of that Statute?

Further, I ask your Honorable Body to look at page 786 of the DeRaismes case, where Judge Hotchkiss in speaking of section 70 of the Stock Corporation law gives excuses for concurring with Judges McLaughlin and Clarke—

> "To interpret its meaning is little better than guess work * * * I express no doubt as to the power of the Legislature to admit a foreign corporation to do business in this State on terms which affect the liability of its directors and stockholders, rather than such as relate to the mere operations of the corporation itself, but an intention so to do should be plainly expressed, and I prefer not to construe vague expression as producing that result."

One would be almost forced to agree with old Shakespeare "thou dost protest too much," for the statute is plain enough for a school boy to understand. Why electrocute men on circumstantial evidence, if we close our eyes to this situation? Do these wabbling vacillating methods to avoid the enforcement of this statute lead one to suspect a reason? Why the gate ajar? Is it because in this jurisdiction our patriotic citizens find foreign corporation charters, more serviceable to their purpose to issue their watered stock and manipulate the capital? It would be well also to scrutinize Judge Ingraham's dissenting opinion in the DeRaismes case. The general result of all these opinions is, that if the law of the chartering state makes dividends unauthorized under certain conditions, then under the laws of this State, Section 70, a remedy is provided for the corporation to recover them; but, if there is no such provision in the laws of the chartering state, then what you gentlemen as members of the legislature have said and done, goes for naught, carries no weight or decision, for your enactment is repealed by this Court, and when you state that a foreign corporation doing business here and paying unearned dividends subjects the directors to personal liability, it means nothing in this Court unless the chartering state so wills it.

I contend that none of the opinions written by this Court involving the construction of these statutes Sections 28 and 70 evidence a willingness to enforce the mandates of your Honorable Body. This is, I submit, a clear case of beating the devil around the stump; that it takes away from, in fact destroys the power which the Constitution gives your Honorable Body as the legislating body of our state, a plain usurpation of power, and an utter transgression of your Constitutional authority.

The question is, how much harm has this decision rendered in the DeRaismes case worked in this community, and how much harm will it work, for the mere fact that defendants bought DeRaismes stock does not atone for the injustice done. Undoubtedly there were many other small stockholders who suffered, so instead of righting a wrong it only emphasizes that those involved were probably conscious of the fact that they had put "something" over, which they could not hope to sustain when they got to the Court of Appeals. But why should it be necessary for litigants to stand the expense of going to the Court of Appeals for a true construction of these statutes. Therefore, the harm done by the decision in the DeRaismes case is untold. It is gratifying to note, however, that if one has the necessary stamina and finances to carry his fight to the higher court for justice, he will find results will follow that effort; for there seems to be in that court no vague impression as to the meaning of these statutes. See Judge Cardoza's opinion in the case of the German American Coffee Company vs. Diegl, 216 N. Y. p. 57 decided in 1915.

If recollection has become dim, and time has now effaced the sanctity of the oath, it would not be amiss to point out that our courts were made not to protect the law breaker, but those who find themselves helpless among the labyrinths and intricate passages made by moneyed powers to bewilder the less fortunate of our brethren, who are entitled to the protection of our Courts. It is time this court was forced to understand what is meant by upholding the honor and integrity of the profession. It is time they were brought to a realizing sense of the untold harm which is bound to result from decisions such as pointed out above, and to say that such a decision could, by even the most infinitesimal quality afford protection to the investing public, is like being bit by a blizzard in July.

MY PERSONAL GRIEVANCES:

I have incurred what I at first contemplated would be grave displeasure, but what I now know is nothing short of hatred, malice and venom, of one of the great moneyed influences of our community, and thusly:

I have taken up the work of searching into and investigating the title to a piece of property, the history of which has been food for the pen of some of the greatest historians of our times. I am not unmindful of the law, and in taking this work up did so with the firm intention of not going outside of the ethics of my profession in any manner whatsoever, and I can in all sincerity state that I have lived up to those intentions; that the work I am doing is perfectly legitimate, being nothing, absolutely nothing more than an investigation into the title to the lands on Manhattan Island held by the Corporation of Trinity Church. I have made it very plain to any person who has sought to retain me, and they well understand, that the work I am doing is merely an investigation. I do not solicit anyone to retain me, and should anyone write to me who is not a client, I immediately inform them that I do not correspond except with clients; that those who retain me must do so of their own volition, and through information obtained elsewhere than from me. Upon retaining me the fact is made plain to them that I make no charge for my services, but that the funds contributed are to cover the expenses of office rent, clerk hire, etc. I do not circularize in any way, and do not solicit subscriptions to this work. I mention the above facts in order at the outset to lay before your Honorable Body just what this work consists of, my connection with it, and my methods of conducting it.

In 1912 I was approached by, and importuned to take this work up for a man by the name of John H. Fonda. At that time I had no previous knowledge of this man or of the work he was doing, or how long he had been working on it. He gave me a short history of this matter, after which I told him frankly that I could not believe such a thing possible, and I did not believe such practices would be followed by a church. He urged me to take the matter

up and investigate it, and I did, with the result that I found some good hard facts to bear out these statements which had been made to me. My reason for mentioning Mr. Fonda and my connection with him is merely to tell how the matter was first brought to me, and how I became interested in it. My connection with Mr. Fonda was not of long duration, as there were things said and done of which I could not approve, and it was necessary for me to sever my relations with him. I did, however, upon an indictment being returned against him for fraudulent use of the mails, defend him, and successfully; but this was done because I felt that I was better prepared to defend him than a stranger would be.

The history of this great controversy is as follows:

During the primitive period of Manhattan Island, there lived a lady who has since been written of as one of the most illustrious women of that time — Anneke Jans Bogardus. The story of her life and her interests in the Island of Manhattan are perhaps unknown to you gentlemen, as they were to me, when I was approached in 1912. She possessed at that time one of the coveted farms on Manhattan, and when she died in 1663 and passed that property on to her children, she certainly fulfilled the prophesy in that trite little verse:

Lives of great men all remind us,
We can make our lives like theirs,
And departing, leave behind us
Lawsuits to enrage our heirs.

For the heirs of this illustrious lady have been battling for their rights and interests in this property for over two hundred years, and show every indication of an untiring energy in that direction. My investigation into this title convinces me that the Bogardus were on this property until after the Revolutionary War, and that this is apparent from one of the very cases which Trinity Corporation always cites for her own purposes, (4 Sandford p. 633) and in order to impress one with the fact that because something was decided by our courts by one Judge, all questions regarding that controversy should forever be barred from the human tongue. There is another fact apparent from this case, and that is, that Trinity Corporation did not start to sell lots, vacant lots, on the Bogardus farm until after 1780; that Trinity claims the property under a so-called Queen Anne grant, dated in 1705, which purports to give Trinity the King's Farm, sometimes called Duke's Farm, sometimes called Queen's Farm, and the King's Garden, sometimes called Queen's Garden. This grant it will be observed has no northern or southern boundary, thus enabling Trinity to reach out where it had a mind to, and gather in as much as possibly could be gathered, by violence or otherwise, except of course paying any compensation therefor. This investigation work has become of almost all-absorbing interest, and presents a most fascinating study, not only as to the legal questions involved, but as to historical.

Before I defended Mr. Fonda on the indictment I was earnestly requested by one of his supporters to continue the work of the investigation. I did, and meanwhile others became interested but through no solicitation on my part, those others brought in more until now I have several clients who are interested in the work of this investigation.

In the proceedings which are now pending, one of the main objects seems to be, and one upon which they have spent a good deal of useless energy, is to connect me with circularizing work which was done by this man, despite the fact that my name has not been connected with it in any way, and despite the fact that some of those circulars were sent out after I had severed my connection with him. As I have stated I consider this investigation clearly within the letter of the law, and therefore I have the courage of my own convictions that what I have done, and am doing is perfectly just, right and proper. On any other theory our title companies are not doing a legitimate business, for what man does not feel at liberty to go to any title company and ask for a search on any piece of property, and the title company conducting that search does not seem to be the object of prosecution by any government or state official because it accepts a monetary consideration for that search. Because the search I am conducting has to do with the properties held by Trinity Corporation I fail to see why I should be the object of this contemptible attack. As I state I do not solicit subscriptions for this work, I don't advertise or circularize and it is a matter conducted absolutely on a voluntary basis. True, I do report to my clients the results of my search from time to time, which perhaps if taken up by a title company, would not go back of Trinity title to this property.

In laying this matter before your Honorable Body I will state that I as the victim of a dastardly attack, following a fiendish conspiracy, compounded in the office of one of the members of the legal profession, participated in by a Government official, and last — but not least — by a representative of Trinity Corporation, John N. Drake.

In order to lead up to the compounding of this conspiracy it will be necessary for me to relate some other circumstances which have a direct bearing on how the tool, these men used, managed to be introduced to me. Among my friends and clients of long standing were a Mrs. Bulmer, and her daughter, Mrs. Winterfield. They have had living with them from time to time during the last two or three years a man by the name of Alexander Calligari, who sometimes passes as a Frenchman, sometimes a Greek and sometimes a Roumanian. Whether or not this man had heard of me and my connection with this work before he went to live with Mrs. Winterfield is more than I can say, and she does not know; but I do know that after moving to her place my name was brought into a conversation which they had in regard to a matter which I had taken up for Mrs. Bulmer, called the "Baker Estate." I have learned from Mrs. Winterfield that there was a discussion as to whether anything could be done in the matter, and that Calligari asked why I did not go ahead with it, and upon being informed that it needed money. He suggested that they get a statement from me, and that he would raise some money for them to go ahead with the matter. I was asked to make such a statement, but had to tell them I could not do it as I had no ground upon which it could be made. Mr. Calligari then, as I understand it, expressed a desire to meet me, and Mrs. Winterfield brought Calligari and his wife to meet me in the Spring of 1914. He then asked me about this statement and I explained why I could not make it. The matter was then dropped until in September, 1914, it was again revived by Mr. Calligari calling at the house. During the conversation he expressed regret that I could not make a statement in the Baker estate matter upon which he could raise some money for Mrs. Winterfield and Mrs. Bulmer. I then explained to the man why I could not do what they wanted; that I had no certified records in the Baker estate matter, and incidentally in telling him what certified proofs, data and records were I mentioned the investigation I was making into the title to the lands held by Trinity. During the conversation I

showed him a circular, which I have since learned he put in his pocket, but having a strict regard to the truth I cannot state whether I gave that to him or not, I cannot now recollect, all I can say is that he had that circular. This man before he left the house that evening had made me an offer to raise some money for the Trinity investigation, which I immediately refused, (as will be seen by his testimony before the Grievance Committee) and he thereupon urged me. Had I any right to have any suspicions of a man who had come to me to get a statement to raise money on in one matter, and before he left was willing to try to raise it on another, and urging me to accept? I am only human, and the idea occurred to me to get at his object, so I laid low. A very few days afterwards he came back to my place with the story that he had an offer of $25,000 from a Wall Street broker. Of course I laughed at this proposition, and I told him that no Wall Street broker would do anything against Trinity; that he would not last six months if he did. This annoyed him, and he turned to some one who was present and said "What do you think, Mr. Gridley won't believe me — I've got a $25,000 offer for him from a Wall Street broker." He then asked me to put up a small contract for the attorney to see, telling me what he wanted in the contract. I decided to go ahead with the deal, at least to this extent, and thus would I find out who was back of this man, for I was thoroughly convinced from his statements, and what he wanted in that contract, that he was not alone. He wanted a $300,000 provision therein made for the investor. This was quite sufficient to convince me that my suspicions as to him were well founded, and I purposely omitted such provision from the first contract; because I knew that if these parties were on the level they would know that in a matter of this kind I would not guarantee them any return for their money; but if they were not, they would send Calligari back to me to have the stipulated amount put into the contract. He came back as I expected.

During these negotiations I importuned him repeatedly to give me the name of the man who wanted to advance this money, which he absolutely refused to do, simply stating that he was a Wall Street broker, and that he, Calligari, did not wish to divulge his name. He called me frequently on the phone during that week and made several visits in regard to the deal. This first contract was mailed to him on the 8th of October, 1914. On the morning of the 10th of October, 1914, he called on me, and complained because I had left out the $300,000 provision in the contract. He said I had prevented the deal from going through on that day, because the day being a short day, Saturday, there was no time to get the contracts redrawn and have the deal closed, and Monday being a holiday the deal would have to go over to the 13th; that his man was all ready to close. I told him I would not draw another contract until he returned to me the one I had already sent him on the 8th, which he said he did not have with him then, but he promised to return it that morning. He did return it by special delivery. I then decided then and there to go the limit with him, never intending to take or use a dollar of any money under that contract. I drew the contract which he asked me for containing the $300,000 provision to be returned if any recovery, on that day, October 10th, 1914, and mailed it to him.

Sunday, October 11th, 1914, quite early in the forenoon, Mrs. Winterfield came to my place with her neice, and demanded a commission for introducing Calligari to me. This somewhat astonished me, and of course I refused it. I told her that I knew it was a frame up; that I had been suspicious of the whole deal from the first; that I was trying to find out who was back of Calligari. I told her that I did not even know the name of the Wall Street broker who was to put up the money; that he had not asked to see me; that Calligari would not give me the name, and I asked her if she knew who the man was. After much discussion in which Mrs. Winterfield tried to make me believe the offer was bona fide, she went to the telephone and called Calligari. She told him of my suspicions; that I was insisting it was a frame up; and that he had better come up there. She reported that he had at first refused to come, but had finally agreed to come. He did come that day, October 11th, 1914, and had dinner there. We talked over the matter and Mrs. Winterfield told him he had better give me the name of the man and asked him what his objection was to doing so. After some hesitation he said the man's name was Leo Chatterlee; that he lived on East 37th Street; that he owned from his house down to the corner. We then discussed the man's name and he was asked if he did not mean Satterlee, but he stuck to the name Chatterlee. We talked over the different statements he had made to me about the man—one of which was that he was an old man; that the son of this man who was married, wanted $5,000 for an automobile for his affinity, and he thought this was a good way to get it; to get his father to put up this money, and take $5,000 out of it for himself. I purposely had him repeat these statements he had previously made to me. He reiterated again and again that the deal was bona fide, and that it would be closed without fail on the Tuesday.

Calligari left intending to telephone me Tuesday morning. Instead of telephoning me, he came to my place early Tuesday morning. Up to this time I had fallen in with his scheme to get me to go to a bank and take this money; but that morning I closed in on him and told him I would not go to the bank; that if the deal was to be closed it would be closed right there, where I could have my friends around me, and his man would have whoever he wanted. When that crook left the house I knew that the deal was off, for I knew very well they would never come up there in front of witnesses. Calligari called me up, as I expected he would, at two o'clock that day (I have a stenographic record of this conversation) and he said "Mr. Gridley, my man wants to take these contracts to Walker, what shall I do?" I told him to let his man take those contracts to Walker, or anyone else he had a mind to. He told me during this telephone conversation that the people were in his office ready to close the deal. When he left the phone I doubled back on the phone and found he was not in his office; that two men were there who had been waiting for him all morning; that they did not know where he was; that he had not been to his office that day. It is safe to assume who those two men were waiting for. When Calligari called up just about a half hour afterwards. He said the deal was off. I expected this of course, for there was nothing else to do considering I would not go after the money. What use they were going to make of that telephone message about Walker I know not, but I determined to know what was Walker's connection with the deal, so on October 19th, 1914, being in the Post Office Building I called on him, voluntarily. I did not tell him why I called, but he did not leave me long in doubt as to his connection with the matter. He had a copy of the contract drawn for Calligari in his possession. I gave him my opinion of the deal, said it was a frame up, and that I never expected a dollar under that contract, and never intended to take it.

Calligari had been acquainted for some time with a lawyer who had been in the employ of Jay & Candler, Frank L. Boynton. He told Mrs. Winterfield that he had shown this man the circular he got from my place, and that Boynton had told him that according to a recent decision, any lawyer who had anything to do with that matter would be disbarred; but Calligari added when reporting to her "I guess Gridley knows what he is doing." Despite this fact, Calligari came to me and asked me to put up that contract for his man to show his lawyer. Would this show that Calligari and Boynton got their heads together on the terms of that contract?

Mr. Boynton testified before the Grievance Committee that Calligari came to him on the 9th of October, 1914 (Page 65). That he telephoned to Drake on that same day (Page 66) and informed him of Calligari's visit to him.

The testimony given before the Grievance Committee, by this man Calligari, palpably shows that I was to be the victim of some scheme or conspiracy. The Grievance Committee of the Bar Association must have been perfectly well aware that this man, Calligari, either lied when he drew his complaining affidavit, or when he was before them making his statement, for in his affidavit he stated that Mrs. Winterfield told him about the Trinity matter, and that I needed money; before the Grievance Committee he stated that the matter was mentioned by me incidentally with the Baker estate matter, which I had in charge for Mrs. Winterfield and her mother. In his affidavit he stated that I was endeavoring to procure money, but he stated before the Grievance Committee that he had offered me the money and that I refused it (Page 5). On page 15 of the Grievance Committee minutes he states "I did not say you asked me for the money; I said that I would say a lie, but I do not say that Mr. Gridley." He also stated that he was at my place to dinner on Sunday the 11th (see page 22) but he states that that was the first time he came. Will you gentlemen read between the lines here. Boynton states that Calligari was advised on the 9th not to have anything more to do with this matter (See page 66). He also made two other palpably incriminating statements — "I did not know that Mr. Boynton was after you" (See page 16). "I never knew that Mr. Boynton was with the Trinity Church people" * * * * "I never knew that Mr. Boynton was for the Trinity Church; I never knew it. I never knew that Mr. Boynton was acting for Trinity Church before this, and I went with the paper to consult him if it was all right. That is all I did." I never asked him one question before the Grievance Committee that made such a statement necessary. It just fell from his lips naturally. Would this lead anyone to suppose that this man had loaned himself to this scheme.

Now the Grievance Committee was perfectly cognizant of the fact that he testified he was at my place on Sunday the 11th, and that just a few pages further on in the testimony Boynton stated that on the 9th of October he told Calligari not to have anything to do with the transaction. If that Committee had been inclined to do their duty, would they not have immediately set on foot an inquiry as to this whole scheme. Say what you will, and take this whole shameful conspiracy from every angle, it is plainly borne out by facts that it received every degree of protection from the Bar Association.

I charge that the Grievance Committee had proof before instituting these proceedings that the complaining witness Calligari was a falsifier; for if the discrepancy between his statements as given before them on April 28th, 1915, and his affidavit are not enough, then gentlemen I will give you here verbatim a letter written to Einar Chrystie, Counsel for the Grievance Committee of the Bar Association, dated October 23rd, 1914, five months before Calligari signed his affidavit. It is as follows:

Dear Mr. Chrystie:

In the Matter of Willis T. Gridley, an attorney:

Referring to the above named matter you will please find enclosed a copy of an agreement in blank, which a few days ago, together with a memorandum in reference thereto, was handed to us by an attorney in this City formerly connected with this office.

Without at this time troubling you with details, we wish to say that, as it appears from the memorandum, our correspondent was approached on or about the 9th inst. by the diplomatic agent of a foreign country having an office in New York, who, in the interests of a fellow countryman, desired to know whether there was any foundation in fact for the claims made by certain persons calling themselves heirs of Anneke Jans Bogardus against the corporation of Trinity Church; that his fellow countryman was about to pay over to the said Willis T. Gridley the sum of Twenty five thousand dollars in cash, and to execute the said agreement, having been convinced by the said Gridley that the claims were just and that Gridley would recover as the result of bringing actions against Trinity Church corporation a large tract of land and other property in this City and elsewhere; that the money was to be paid on that day could our correspondent give assurance that the claims were valid.

It further appears that being informed by our correspondent that the claims were without merit and were of a similar nature to other claims which had been made from time to time by unscrupulous persons, the prospective party of the second part to the proposed contract advised Gridley that he would have nothing to do with the matter further; that thereafter within a few hours he was interviewed by a third party, who had been the source of his introduction to the said Gridley, and advised that the said third party had lost a ten per cent commission on the said Twenty five thousand dollars as a result of the failure to make the contract with Gridley as aforesaid.

We are informed by our correspondent that he can at any time procure the names of all the parties to the above matter and can also at any time, obtain for the use of the authorities the original contract in blank from which the enclosed copy was made.

We will be glad at any time on hearing from you to arrange an interview with the parties for such further action on your part as may seem advisable.

Yours truly (sgd Jay & Candler."

I call the attention of your Honorable body to the fact that this letter absolutely states that this fellow countryman of Calligari's had been convinced by me that I would recover a large tract of land and other property in this City and elsewhere. In the third paragraph of that letter they state that the prospective party advised me that he would have nothing to do with the matter further. Would this discrepancy in statements put an ordinary person on their guard as to the whole transaction, much less men such as the Grievance Committee of the Bar Association? Would this look to you as an attempt to close their eyes to anything which might, if investigated, tell them the truth? Why, with this letter in their possession, did they not make inquiry as to Calligari's fellow countryman?

Why, with this letter in their possession did they not make inquiry as to who was the person who was to receive the ten per cent. commission? Why did they not seek to find out whether Calligari was in truth and in fact the diplomatic agent of a foreign country? Would it not have been the first duty of this body of men who have taken an oath to uphold the honor and integrity of the law, to have here started an investigation, not alone as to Calligari, but as to Jay & Candler. Had they made that investigation gentlemen these proceedings would never have been instituted; for they would have found that Calligari was not General Consul of Roumania, for by his own statements he is an exile from Roumania; that he claims to be at times a Frenchman, at times a Greek, and is of very poor standing in the community, and many other facts too numerous to mention. But let us say that the Bar Association were careless in this regard it would not excuse the Appellate Division, for they had before them Calligari's testimony before the Grievance Committee (such as it is for I contend that transcript is incorrect — see report attached) in which he stated repeatedly that he offered me the money. They had my answer to the petition; they had the affidavit of Mrs. Winterfield; and they had also in those minutes furnished by the Bar Association and copied by me for the purpose of filing with the Appellate Division, the conflicting statements of Calligari, Boynton and Drake, from which one could spell out nothing else but what these three men had their heads together.

On October 31st, Jay and Candler, Trinity's attorneys at that time, wrote the following letter:

Mr. John E. Walker,
Assistant U. S. Attorney,
Post Office Building, New York City.
Dear Mr. Walker:

Matter of Willis T. Gridley

Yesterday afternoon Mr. Drake, who had received information that the above named Gridley was living at "The Versailles" 250 West 91st Street, at which place he also made his office, paid a visit to the building in the hope of ascertaining whether or not the said Gridley received any amount of mail there. The said building is a modern apartment house with a large central hall, with telephone, table, etc. etc. On the table in such a position that a person passing could not help observing what was thereon, lay a letter postmarked "Mt. Clemens, Mich., Oct. 29" and addressed "Mrs. Adelia Buys, 250 West 91st Street, New York City."

On inquiry of the hall boy, a negro, he, Drake, learned that said Gridley was indeed living in the building; that he received lots of letters from Cleveland; that Mrs. Buys was visiting Mr. Gridley; that a Mrs. and Miss Wright also had apartments in the building.

You will recall that Mrs. Adelia Buys is the Secretary of the "Anneke Jans Bogardus Association of Ohio" and Vice-President of the Executive Board thereof; that from information in Mr. Drake's possession during his visit to the middle west a year or two ago, she had been in receipt of large sums of money in aid of the cause represented by her association. You will recall also that the "Peter O'Shaughnessy" decoy letter is in the form of a letter written by Gridley to Mrs. Buys, and has a postscript signed in ink by Mrs. Buys. This letter Mr. Drake handed to you a few days ago, with the copy of Gridley's proposed contract.

On the 29th instant Mr. Drake had a personal interview by appointment with the Roumanian Consul, A. Calligari, at the office of Mr. Boynton, and learned the following facts.

That Calligari first heard of Gridley through a Mrs. Winterfield, boardinghouse keeper of Sheepshead Bay Brooklyn, who is his landlady, who while discussing certain alleged efforts which Gridley was making in her behalf to recover certain lands in Philadelphia, told Calligari that Gridley had a law business involving property in New York City worth many millions of dollars and that he was endeavoring to procure some money to prosecute claims against Trinity Church in the names of some fifteen or more clients of his who claimed to be heirs of Anneke Jans Bogardus; that the said claims were of the highest merit and that anyone who could furnish Gridley with money would reap great profits, Calligari having stated that he could probably find some money, met Gridley and a Mrs. or Miss Wright, who is Gridley's stenographer at "The Versailles" and having heard Gridley's assurances concerning the claims, agreed to try and find twenty five thousand dollars. He subsequently did find this money from a fellow countryman, who agreed to make the venture if Calligari would sign the contract proposed by Gridley as the party of the second part, the actual loaner of the money remaining in the background. Calligari requested Gridley to draw a contract and subsequently received through his landlady Mrs. Winterfield the contract, a copy of which you have. He states that his landlady Mrs. Winterfield, was to receive ten per cent commission on the money to be paid to Gridley. (See Mr. Boynton's memorandum dated October 9th, in your hands.)

Mr. Calligari has assured us that he is prepared at any time to substantiate his story, and to give such assistance as may be required to put a stop to the said Gridley's activities. He is an intelligent man and is, we understand, a member of the Roumanian Bar.

Yours very truly Jay & Candler, D."

If this letter is compared with the statements made by Jay & Candler in their letter of the 23rd of October, 1914, to the Bar Association, you will find plenty of discrepancies. Why if these charges were made with any degree of honesty would not the statements in regard thereto match, at least to some extent. In the letter of October 31st to Walker, they state in one paragraph "Contract proposed by Gridley" and "Calligari requested Gridley to draw a contract" this would show that at times they are off their guard, and if they were telling the truth these discrepancies would not be continually cropping up in letters, statements and sworn testimony, and even if these discrepancies had escaped the eye of the Bar Association, shall we be kind and say through carelessness, that could hardly be claimed by the Appellate Division, for as above stated they had more data from which they could glean the sincerity of these charges; they had it plain before them that these statements in these letters were refuted by the testimony given before the Grievance Committee. That in direct opposition to the statement that "the prospective party advised Gridley" as stated in the letter of Jay & Candler to the Bar Association, Calligari's own statements show that I did not know the man had never met him or heard from him, and the statements of all the rest of the conspirators shows that no one else ever did.

Now gentlemen, I charge that the Bar Association Committee protected Calligari in not commanding him to disclose the name of his investor, whom he had represented to me as this "Wall Street broker;" that when I mentioned his statement to me of the son of the investor who was

married but who wanted $5,000 out of the money for an automobile for his affinity, and asked Calligari as to that—Mr. Davis intervened and said that that had nothing to do with it (Page 16). I answered and said that I wanted to bring out the facts which led me to believe it was a fishy game, and I submit that by every rule of evidence every word that was said between Calligari and myself was relevant, and if this was an honest investigation they would not have excluded that evidence and protected him. The chairman answered me "There is a contract of yours. It is not a question of your word against his" (See page 16). Yes there was a contract, but the facts which led me to draw that contract were irrelevant to the issues here according to the committee.

Therefore, from this process of reasoning, I had no right when Calligari came to me and told me, as plainly as words would tell me, that he was framing up a game on me; that he wanted a contract to carry on that game; that when he told me all these fishy stories it should not have prompted me to find out who was back of him. According to the Bar Association I had no right to draw that contract, even though he asked me to draw it and gave me the terms he wanted in it; that when Calligari called me up on the Tuesday, October 13th, and told me his man wanted to see Walker, I showed no honesty of purpose in telling him to let his man go to Walker or to anyone else he had a mind to.

I submit that no where in the annals of the courts in this or any other country, will you find that a lawyer has been brought up on a charge of drawing a contract between himself and a party whom he had not seen, did not know, and who did not care enough about the matter to know him, and a party whom he had every reason to expect did not exist at all. Where is the justification then for laying traps to catch criminals, which our government and others are doing every day. Mine was a trap, to catch the trappers after me, and I know and feel that when you read the full history of these proceedings you will say that I had every reason to suspect the deal was not bona fide, and that suspecting it, I had every right in the world to go out after the people back of it, and find out who they were, as I have done. Why was the Bar Association so keen as to this? It is safe to assume that they did know of these discrepancies and were doing all in their power to protect the weak spots in their armor. I submit further that if this was not a prejudged and prearranged affair, the first duty of that Bar Association would have been to make Calligari produce this man; the second to find out why Jay & Candler's statement differed so greatly from Calligari's affidavit. I also charge that it was the duty of Walker the Assistant U. S. District Attorney to find out when he first heard of this matter whether it was a bona fide deal or not, but instead of doing that he goes to the witness chair with the testimony that he did not know and never inquired because he was not interested. He was interested enough to make himself a witness.

It will be seen therefore by the foregoing that the Bar Association had evidence that there was no party of the second part, and that therefore the Appellate Division must have been so informed. Therefore in the face of these facts they are speculating, and intending that the Referee shall speculate as to whether I intended to take any money under that contract. Certainly drawing a contract does not signify that it was ever to be closed on its terms. "It takes two to make a bargain."

AS TO THE CONTRACT:

As Mr. Walker, Mr. Drake and Mr. Boynton are doing a veritable tango over the contract proposition, throughout their testimony, petitioner will endeavor to point out the discrepancies in their testimony, and also point out the different testimony given by these people under oath, in order to call the matter to the attention of your Honorable Body as but one of the proofs that this whole matter is schedule — it is a through train gentlemen, and it is scheduled to stop at but one station. They have constituted themselves, the railroad, the officials and the train crew, and they are not out looking for signals. I am the only passenger gentlemen, and I implore you to run that train on to a siding until I can get my proofs and facts before you.

Now when Drake got on the stand I asked him as to his first interview, and when it was. He did not remember the date; his records would show; the register would show. I asked him to produce the register; he asked me if I would take as a substitute a typewritten copy. I did not say I would, and it is a good thing I did not, for I got some valuable testimony by having both the typewritten statement and the register. Drake testified (see page 37) that the first interview he had with Calligari was in Boynton's office and that Boynton and Calligari were there; that he had not heard of this matter until twenty-four hours before he met Calligari, which he thinks was in October, 1914, but the date he cannot remember (see page 38). Mr. Jackson produced a paper on this hearing (see page 40) and handing it to Drake asked him if it would refresh his recollection? Oh yes! the flowers of his recollection started to bloom, and he blossomed forth with the statement that the date was October 29, 1914 (see page 41) and he read from that paper the following:

> "Received a message from Mr. Frank L. Boynton, 160 Broadway, to the effect that Mr. Calligari, Roumanian Consul at New York City, was at his office prepared to give particulars of his conference with Willis T. Gridley in the matter of the $25,000 loan requested by Gridley to bring proceedings against Trinity Church. Attended at Boynton's office and learned that Mr. Calligari first heard of Gridley and his schemes through Mrs. Winterfield, Sheepshead Bay, Brooklyn, who is Calligari's landlady, etc."

Now on page 44 he makes the statement that this memorandum was prepared the date of the interview. On page 45 of the testimony he was asked "prior to that time had you seen an alleged contract of any kind that they claimed was drawn by me?" and he answered "I saw it the same day" — meaning October 29th, 1914. Let us now turn to Mr. Robert W. Candler's appearance upon the scene with the Trinity register, and you will find that Mr. Candler in reading from that register said that the entry he had there dated Oct. 9th, 1914, was an interview with Mr. Boynton in reference to Mr. Calligari; that this was the first entry of any interview with Mr. Boynton. The entry is as follows:

> "Received message from Mr. Frank L. Boynton, to the effect that Roumanian Consul in New York, Mr. Calligari, 24 Stone Street, N. Y. had interviewed him in regard to the claims of Anneke Jans Heirs, saying a Roumanian acquaintance of his was about to enter into a contract with Willis T. Gridley by which in considera-

tion of $20,000 ($25,000) cash (to be paid at noon today) Gridley would assign 6% of all the fees he expected to receive from the heirs he represented for recovering from Trinity Church by suits and otherwise the lands claimed by the heirs; that Gridley had informed the Roumanian that he would get over $300,000 in return for the $25,000 advanced which was to pay the expenses of the publication by Gridley of a book on the subject and of the actions to be brought. Mr. Boynton advised Calligari to tell his client that there was no hope of success in such actions and that the claims were fraudulent, accordingly when the Roumanian met Gridley yesterday afternoon by appointment to sign contract and pay over the money, the Roumanian told Gridley that he had considered it and would not pay the money. Mr. Boynton and Mr. Drake called on Mr. Walker of the United States Attorney's staff, who promised to lay the whole matter before the United States Attorney, etc."

I will treat of the report Boynton made of this interview later. Now Drake had testified that the first interview was in Boynton's office and that Mr. Boynton and Mr. Calligari was there, meaning his first interview with Calligari, which he has testified was on the 29th of October, 1914. Now here is where the register differs somewhat. This first interview between Boynton and Calligari was on the 9th of October, according to the register, but it does not state that Drake was present at that interview, but it does state that Boynton and Drake called on U. S. District Atty. Walker. Drake testified on page 34 of the testimony that he had been in Mr. Calligari's office three or four times; but when the register of the office was produced by Mr. Candler, it gave no entry of a visit by Mr. Drake to Calligari's office. Now it will be observed that the entry read by Mr. Chandler was made October 9th, and that the cash was to be paid at noon that day how then did "the Roumanian meet Gridley yesterday afternoon" that would make it the 8th. On the 8th according to their testimony he had not even consulted Mr. Boynton. Mr. Candler then read the next entry (page 195) which was dated October 10th, and is as follows:

"Received from Mr. Boynton a copy of proposed contract of Gridley and handed it to Assistant U. S. Attorney Walker."

Mr. Candler read the next entry in the register as October 23rd, 1914, which was an interview between Drake and Mr. Hoar of the Bar Association. The next entry was October 29th and read as follows:

"Had conference at office of Mr. Boynton with Mr. A. Calligari President of the Carmen Sylva Cigarette Company 26 Stone Street New York, telephone 724 Broad, whom Willis T. Gridley had approached (see entries of date of 9th inst. and after) to contribute twenty-five thousand dollars to his proposed action against Trinity Church, etc."

There is much more similarity between the entry of October 9th 1914, and Drake's memorandum of October 29th, 1914, than there is between this entry of October 29th and Drake memorandum of October 29th. Further, throughout Mr. Candler's reading of this register he omitted any mention of Drake's visits to Calligari's office. Were they in the register?

Now we will take Assistant U. S. Attorney Walker, the public official who considers I am not fit to practice law (see page 108). I want to state here that I requested that Mr. Drake and Mr. Walker take their oath on the bible, because I had a little inside information as to what their testimony would be, having the proofs of this conspiracy right then in my keeping, and I wanted to make their going to the stand as impressive as I could. Drake accepted that form of oath but not with a very good grace. Mr. Walker, who at first objected to doing so, and said he preferred to take the oath in the way he did take it, took hold of the good Book with all the venom he could possibly display, and when he kissed it, with that same venom and hatred I felt that I had caused a desecration of God's book by forcing him to place his lips thereon, and take the oath in that form. Your petitioner has not since insisted on this form of oath. If Walker's attitude was any criterion as to his regard for that book, he certainly could not have had any more regard for the truth.

Walker stated, (page 93) that he had not seen Drake for six months previous to the month of October 1914, when he came to his office and delivered to him this copy of the contract, but he could not give the date of the interview. He states that he does not remember whether Boynton was with Drake or not (see page 94). But on page 95 of the testimony he states that Drake came to see him some time in the month of October, within a week before the time I went to see him, which was October 19th, 1914. He testified that on the occasion of his first visit "he came in and said something about that Mr. Boynton or some acquaintance or friend of his, either directly or personally, or some of his friends, was negotiating with you for a contract to put up some money concerning his old Anneke Jans affair." On page 96 of the testimony you will find that I asked him if Drake brought him a copy of the contract, and he answered no, no writings at all. I then asked him this question "But he said there was to be a contract and he was going to bring it in?" and he answered A. He was going to bring me in a copy of it yes; and the next day, I think, he came in and delivered to me this paper here—(indicating the paper). Now note that the Trinity register (see page 195) states that the copy of the contract was received from Boynton on the 10th and that it was handed to U. S. Attorney Walker. So that out of the mouth of one of their own witnesses we have the sworn testimony that Boynton and Drake went to see him and stated that they were negotiating with me for a contract. The Trinity register gives this visit as of the 9th, the day when, according to all their testimony—but not Calligari's statement—the deal was called off.

There is a little further testimony on Walker's ability to tell the truth. (See page 94) where he states that he does not know Calligari. Never saw him unless he was one of the men who was up at the Bar Association before the Grievance Committee. Walker was talking to Calligari in the vestibule. I saw him. Mr Boynton testified on page 288 of the testimony

"Q. Did you wait in the waiting room downstairs before the hearing? I don't remember seeing you.
A. Yes, I did.
Q. You and Mr. Walker and Mr. Calligari were there talking when I came in, were you not?
A. Yes.

On page 289

Q. Did you introduce Mr. Calligari to Mr. Walker on that occasion?

A. I shouldn't be surprised. I am not sure of it.

Q. Don't you know whether you did, or did they know each other before that? A. I think they were introduced; I don't remember whether by Mr. Drake or by me."

There could have been small doubt in Walker's mind but what I had treated this matter as a scheme from the first, but his unwillingness to so state even before the Grievance Committee shows which side of the fence he had decided to plant his feet. He acknowledged (page 39 of the Bar Association minutes) that I said some "Wall Street broker was back of this whole contract," but when it came to giving the rest of my conversation he was sure that I had not said that it was not my intention to have the contract executed and carried out. You will note also that Walker stated before the Grievance Committee that Drake called on him in the forenoon (page 40). But note, the chairman of the Grievance Committee asked me why I went to Mr. Walker's office, and I told him (see page 42) that Calligari had used his name over the phone. Note also question by Mr. Ottinger "And the moment he said Mr. Walker you knew it was this Mr. Walker?" And I answered "Sure."

We will now turn to the third man—Frank L. Boynton—who was at one time a clerk in the office of Jay & Candler. On page 278 of the testimony he testifies to two meetings with Calligari on October 9th, 1914, one in the morning and one in the afternoon. On page 276 he testifies that Calligari showed him the paper that I have identified (meaning the contract Exhibit 35). On page 277 Mr. Boynton testifies, when I had asked him if he would swear on his oath that Calligari showed him that paper, Exhibit 35, and I asked him to look at it, "As well as human memory can serve, he stated it was one of three copies. Of course it might have been another carbon copy of the same thing, but the watermark is the same, the cover is the same, the typewriter appears the same. I made a note of these items at the time, and I copied it line for line and word for word, and you can compare it with this one I copied." He was therefore trying to lead one to suppose that he had there the original contract which was given to Calligari. I asked him (page 277 of the testimony) how many copies Calligari showed him at that time? He answered "Only one." Then I asked him "What did you do with Exhibit 35" He answered "I gave it back to Calligari." Later on (same page) I asked him if this was the only contract Calligari showed him," and he answered "The only one. He stated there were three copies of the same thing." Of course having every reason to believe that Boynton had seen the first contract, and after consultation with Drake and Walker had sent Calligari back to me to have the contract redrawn and the $300,000 provision put in the new contract I was rather persistent as will be seen by the testimony to make him identify the paper which he said he copied, and which he furnished to Walker and Jay & Candler, and a copy of which was furnished to the Bar Association—so we have him making a copy of a contract which was not drawn until the day after he made the copy. What would his statement convey that he made note of the watermark, the typewriter, the cover, etc.? What premeditation was here—would this convey any idea of guilt. I have no doubt that he had a contract in his possession on the 8th that had the watermark and the same typewriting as the contract which was drawn on the 10th of October, 1914, for what earthly object would I have in using a different typewriter, or a different paper? I was just as anxious as he shows he was to identify that paper the next time I saw it. Calligari was asked by Mr. Chrystie (see page 6 of the Bar Association minutes) What did you do with the contract? A. I had given it to Mr. Boynton to see whether—Q. Has Mr. Boynton got it now? A. No. I think you have it there (indicating). There were three copies, and I returned two of them to Mr. Gridley. Q. (Showing witness paper) And is this the contract you received from Mr. Gridley? A. (After looking) Yes. I gave it to Mr. Boynton, and from Mr. Boynton I came back and gave it to Mr. Gridley," and when he made this statement gentlemen not one of that Committee asked him how it got there at the Bar Association if he had given it back to me. But even though he had stated that that he had given it back to me Mr. Chrystie stated (page 14 of the Bar Association minutes) "The witness said this was the original contract given to him by Mr. Gridley." On page 277 of the testimony I asked Mr. Boynton this question "What did you do with Exhibit 35? A. I gave it back to Calligari. Q. Did you have it in your possession from that time, from the time you returned it to him? A. No." So that the evidence has been produced that he saw only one copy, but that Calligari told him there were three. What contract did they truly have at the Bar Association? They did not have any of the contracts I drew for Calligari for he returned them all to me. I asked Mr. Boynton if it was Exhibit 35 which Calligari showed him at both the interviews October 9th, 1914. He told me it was; that in the morning he read it over, and in the afternoon he took it from Calligari while it was copied. On page 271 of the testimony he states that Calligari did not want him to keep a copy of the contract or to leave it with him. So he had him wait while he made the verbatim copy. Now while he saw Calligari on the morning of October 9th, 1914, and a copy of the contract at the same time, he found it necessary to write a letter to Calligari on that day. I asked for a copy of the letter, and he said he was not sure whether he had it—the carbon copy, and then he said he was not sure that it was accurate. The carbon copy was placed in evidence, it is as follows.

October 9th, 1914.

A. Calligari, Esq.,
24 Stone Street,
New York City.

Dear Sir:

After you called upon me this morning I investigated somewhat the matter which you mentioned, and I am anxious to get in communication with you as soon as possible and would thank you to call upon me today. In the meantime please advise your Roumanian friend to have no communication with the other party, but simply to say that he has not been able to arrange the deal as yet.

Very truly yours,
Frank L. Boynton."

With this copy of the letter before you, is it possible to believe for one minute that he was not one of the conspirators.

Gentlemen, with all the above facts before you, taken from the testimony given by these men under oath, could anyone say it is not prearranged, prejudged and fixed. This contract was the first switch to set gentlemen for the fast train. Therefore we have Walker, Drake and Boynton, and the Trinity Register—testifying as to the receipt of that

contract on the 9th of October, 1914; these honorable men who in order to uphold the honor and integrity of the profession will commit perjury to that end, and to assist them in that worthy object the Bar Association and the Appellate Division will shut their eyes to the facts palpably bearing out this conspiracy which were brought out before them.

While testifying before the Referee, Mr. Boynton produced a copy of a paper which he said he had furnished to Mr. Walker the Assistant United States Attorney. This paper was entitled United States of America against Willis T. Gridley, and was drawn on the 9th inst. and delivered to Mr. Walker on the 9th inst. according to Mr. Boynton's testimony. Now gentlemen remembering that there were two men in the office waiting for Calligari to come in, and with this paper drawn for Walker before they got the contract drawn to suit their purposes, will you state that they did not have the trap set for me, and the very fact that I did not go down to take the money will prove that I never intended to take it under that contract. Was I right or wrong in persisting with this man Calligari to find out who was back of him; was it not to my client's interest to do so, and had I not done so, would not another of the black pages of the history of the dastardly practices of this religious organization to punish those who would attack her title to these possessions, have remained a closed chapter? My very persistent actions brought this conspiracy to light.

It is on just such testimony as the foregoing these proceedings have been carried on. They have produced as witnesses Drake, Walker, Boynton, a man named Washburn, a client of mine A. E. Brower, and my assistant, and if you will read the testimony of Drake, Walker, Boynton and Washburn, you will see that these gentlemen threw the truth up in the air, and reverently worshipped it, while they testified just as the spirit of the conspiracy moved them.

I am criticised for my conduct in serving the heirs of this illustrious lady, who desire to ascertain what the facts and proofs are in regard to the passing out of the title of the heirs to these lands, which were granted to their ancestor some fifty odd years before Trinity was even dreamed of. Could we not in the same manner criticise the religious organization that would be guilty of depriving those children of what was rightfully theirs, by force, fraud, fire, etc.? If not, where does free speech come in? I have clearly defined the work I am doing and if it is illegal, then your historical clubs, your historical societies, your librarians, your title investigators, are doing an illegal business, for why should there be such a hue and cry, because the investigation happens to cover certain property in the possession of certain influential powers? If you wanted to know the history of a piece of property would you ask the owner of that property to give you permission to investigate the title of it? Or would you have the work done regardless of what the owner might think? Then, suppose you had investigated far enough to discover that the present owner of that piece of property did not come into possession of it in a perfectly proper way, that he took property for which he did not give any compensation? Would you consider that if you made those facts public you would be guilty of a crime? Would you consider you should be held up to derision, as these people have held me; that you should be dragged through these disgraceful charges; that you should be made the victim of this contemptible plot, simply for the one and sole object to be rid of you? Gentlemen, it is true I have sent reports to my clients in which I have committed the unpardonable sin of stating that Trinity got this Jans Bogardus farm without paying compensation for it, and by the use of fire, force and bribery, but all this is borne out by histories, and some of the Documentary History of the State of New York, and is not a product of my imagination. In fact some points have been taken from the very cases which Trinity has cited. If my mouth is to be closed, then certainly the Legislative Committee, which is now prosecuting their inquiries and investigating some of the greatest moneyed powers of our City and which Committee has laid bare facts which have driven them right and left for shelter, should cease its operations; for it is but doing the same thing, in a measure, and, according to those who are fostering these charges against me, it is a most heinous crime to expose the high handed methods of our financiers, whether of this day and age, or of two hundred years ago.

It is said that in our courts of law, as conditions exist at the present day, our lives, our liberties our fortunes depend upon a system of oaths, oaths founded upon a religious belief of some sort, a degree of consciousness that there is a power above us who will reward our virtues and punish our vices that falsehood or perjury will be punished, either in this world or the next. Hence religion is the cornerstone of our national being, and upon the teachings of our churches and religious institutions depend the happiness, security and welfare of our people. Therefore, a church which is not the living example of the doctrines taught therein, strikes at our national existence, and is an enemy to society. We must have at a nation true, real, honest religion, not a commercial religion, not a pretense, and it becomes the duty of every man who loves his country, this great Republic, and who would, as our forefathers did, sacrifice both life and blood in behalf of his country, to battle with all his might against any force or power who would seek to destroy this fountain spring of our national existence.

To illustrate, the fountain head of our country, our President, as he steps forward to take up the reins of our great government, is called upon to take an oath before his maker to fulfill the duties to which he is called; our Senators, our Governors, our Mayors, our Judges, in fact all public men start out with that solemn oath on their lips to do their duty. There has not yet been found a substitute for that solemn ceremony. We therefore must realize that religion is the very vitals of the country's government, for it is the stepping-stone, the footstool, the opening portal, the sacred rite of all our National offices. Therefore, as you would judge your ruler should he defile his oath of office, as you would judge your public men who disregard their sacred oath to be true and faithful servants of the people, as you would judge the man on the bench who would outrage the dignity of his profession, so must you more mercilessly judge this church, this religious institution, the sole agency of God on earth; this church, which by the resolution of its vestry, has loaned itself to this despicable scheme of bringing before the Bar Association any attorney who might seek to bring her to account for her sin of covetousness; this church which when brought face to face with that sin, not only seeks to justify it, but is perfectly willing to lend itself to contemptible dealings such as are portrayed in these papers, to obliterate from their sight a man who would bring them to account. I say such a church is a blot on the National escutcheon.

Why should we maintain armies and navies if we allow the waters of justice to become and continue to be polluted by the influence of moneyed powers, who seek, not only to destroy our laws as laid down, but to make others to fit

their own situations, likely working on the theory that the man with the money and power is entitled to have his laws made commensurate with his doings in the world at large. This church of Trinity has known for over two hundred years that the prior record title to the property of Anneke Jans Bogardus stood in her name, but by all the fraud and connivance, base unprincipled conduct and dealings that money has at her command, and which none of us are blind to, has deprived the rightful owners of that property, and continues possession of it upon the one claim of adverse possession. The Honorable Legislature of this State some years ago, declared against Trinity's ownership of the Jans property. Had it then legislated on lines to define what adverse possession should mean in the eyes of the law, and not left it for the courts to legislate on that subject, and thusly to license this use of force, fraud, bribery and other means to deprive the true and lawful owner; had the Legislature limited adverse possession rights properly to abandoned and waste lands, and prohibited the driving off of owners of lands in possession, we would not have to the disgrace of this state, a line of decisions built up on an admitted state of facts, at variance with the fundamental principals which from time immemorial and throughout the history of this country has been an established fact, to wit: that lands in possession cannot be taken or obtained without compensation, much less lands in possession where there existed a prior record title. There are here with this church no qualms of conscience for what they have done, but they will, on the slightest provocation go after the scalp of any man who would seek to honestly make public the facts as they really appear by the Documentary History of our State, feeling quite secure in the belief that the courts are with them—they have that all-essential—the money, King of our country, and the King can do no wrong.

The next switch to be set for this fast train of mine was the affidavit of Calligari. They seem to have had a bad time over that; for it took them from October 9th, 1914 to March 22nd, 1915 to get him to go to the Bar Association and sign it. On page 197 of the testimony it says he called to excuse himself for his failure to keep the last two appointments on the ground of sickness and death of a member of his family. God alone knows who died. It could not have been his honor for that had passed on long before this deal.

The malice of the interested parties here is plainly shown by the fact that they want to prosecute an attorney for drawing a contract without knowing that it is ever going to be signed or executed by anyone. If they wished to evidence any interest in that regard what more natural than they should have insisted on the complaining witness giving the full history with the name of the party of the second part. Why was the complaining witness prevented from so doing? Was it because they knew and had knowledge through the subterranean channels and invisible influences that no such party existed.

I charge that the Bar Association Committee well knew that I was an attorney of twenty years' standing, and that when they accepted as true the story of Calligari that I said I was sure to recover several millions of dollars, or anything else for that matter, they must have had a reason for it; for they well know that an attorney will not guarantee even the collection of a promissory note. Aside from this, up to this time, and the petitioner has now rested (meaning the Bar Association) they have not yet connected me up with the mention of a lawsuit, or the contemplation or promise of a lawsuit.

Further, the petition states that I circularize; this fact is sworn to by one of the attorneys for the Bar Association, and is made in the face of my statement that I have never circularized, and this Mr. Hoar, when he made that affidavit absolutely perjured himself; for he could have had no possible way of knowing the facts he has sworn to, because they did not exist.

Now if Walker had not been in this conspiracy, what would have appealed to him as his first duty when Boynton and Drake came to him with that contract—To summons Calligari, and get from him the name of the man who was to put up the money. But look at Walker's testimony. He states he never met Calligari until the Bar Association hearing which was April 28th, 1915. He got the copy of the contract either October 9th, 1914, or October 10th, 1914, about six months intervening, yet he had never met Calligari; had never inquired who the supposed investor was, even from Boynton or Drake, who came to him expecting the Government would indict me; he was not interested in who it was, as he himself has testified under oath; and all these men who put up this deal, belong to the honorable class of our profession.

Just think of indicting Robinson Crusoe and his man Friday for Burglary? It is like having a funeral without a corpse. Sounds ridiculous I know, but it is about the same proposition. Who would they burglarize, yet I am accused of attempting to defraud someone, without knowing who the someone was, or anyone else knowing. They have not yet materialized the someone, and they have taken mighty good care that the tool they used would be well out of the way before he was called upon to make these statements under oath; for from the time Calligari signed the affidavit before the Bar Association he announced to Mrs. Winterfield that he and his wife were going abroad; he kept this up until the time of these hearings drew near; he even got the passports for himself and Mrs. Calligari, and then on New Years Eve the man went alone and left Mrs. Calligari behind him, and gentlemen if you will take his affidavit, and the statements made by Jay & Candler in their letters, and then his statements before the Bar Association you can see why.

Does this move to keep this so-called fellow countryman of Calligari's in the background, look like a concerted action, does it have the merest scintilla of an honest investigation of charges made against an attorney: As to Drake and Boynton, such a move would be expected of them, but what earthly interest could the Bar Association and the Assistant U. S. District Attorney, have in keeping secret this all-important factor in an attempt to defraud, as the name of the man who was to be the victim. I charge that this concerted action stamps them as being in the conspiracy, and establishes the mala fides—this concerted movement participated in by all.

The record is replete with contradictions, and if the Bar Association had stood at that time ready to uphold the honor and integrity of the law, they would have had a clear statement of fact here, and the moment Calligari appeared before them and threw the lie back at them, and back at the affidavit which they had drawn for him to sign, they would have dropped him like hot coals—yes, they would if they had not been propelled by a powerful influence to proceed at all costs. This same record with all its attendant contradictions and incriminations was before the Appellate Division, but little heed could have been paid to it, for with the record of that conspiracy clean cut be-

fore them, instead of sending the matter to the District Attorney for investigation and action, as they should have done, and as I asked them to do, and as they have the power to do, they added insult to injury, and still further prosecuted me by instituting this humiliating and expensive proceeding against me.

If what has been done here is a sample of what the Bar Association will do, I strenuously urge for the sake of those who might come after me and be subjected to this unheard of "protection" that it is time a permanent state board, or the examining board, be empowered to investigate complaints, in order that the State may have full control freed from local influences and business powers and interests. If the time has come when the Bar Association will take up any bunco story such as this, without investigating either the complainant or going behind him, taking merely his bare statements and using them, then it is time your Honorable Body afforded to the attorneys in New York City, the protection which the Appellate Division states we are entitled to. Calligari's absence in France is conclusive of the fact that he was sent away after the Winterfield affidavit went in to the Appellate Division; that up to that time he was only going, but when that affidavit was filed repudiating all of his statements and those of Jay & Candler—Calligari had to be gotten rid of. He was safe up to that time, for they had not used his affidavit in a proceeding where he could be held for perjury. Was there a promise made here that he would not be required to make any sworn statement, and that they would keep him in hiding and protect him?

The Referee before whom this proceeding is being heard, has thus far shown a prejudged and biased attitude towards your petitioner, but in calling his conduct to the attention of your Honorable Body, it is more in pity than in censure, and with all due deference for his age; but when a man has passed his fourscore years, he has likewise passed the milestone of cool judgment. No man can say that one can reach this age without passing into what might be called a state of petulant childishness, which one would be as incapable of hiding as would be a little child. Judge Freedman frequently shows this attitude and becomes so angered at your petitioner that he fairly screams his answers at me, and it is only by the practice of almost superhuman repression that I can keep from coming back in kind. I frequently have to pause and think of this old gentleman's years before I can get myself in hand again.

In this petition they claim that the heirs' claims are without merit; but before this Referee when we want to examine a witness who has characterized these claims as bogus and fictitious, and ask upon what he bases this claim—phew! the objections fly, that is a matter of law, a question of law which must not be mentioned there. You are advised that the cases cited by them have absolutely decided this question forever, and you trespass upon holy ground if you dare to raise the curtain behind 1705. I even tried to cross-examine a witness to show that he did not even know the real contents of those cases, or upon what issues they were decided. But that was a question of law, objected to, objection sustained, and I was told that if I persisted in that line of questioning the Referee would take the witness off the stand. He did. Witnesses have been allowed to testify on information and belief, and when I move to strike out such testimony, it is denied.

My assistant was put on the stand ostensibly to ask her about the circularizing work which she had done for others. Exhausting that topic she was asked as to her dealings with my work. I objected, and the Referee told her to answer. I told them I would take the matter to the Appellate Division. I submit that under the code this is asking her to commit a crime, for it is a crime for a clerk to disclose transactions between himself and his employer.

Again, upon cross-examination of a witness who might have already made a statement which I knew to be false, and being desirous, as any examining attorney would, of seeing if his memory of that falsehood will prevail at a little later time, I might ask some such question as

> "And what did he say to you at the interview before you saw me"

the referee will intervene with his protection and say:

"He has already said he did not see him before he saw you." These things have actually occurred, and are but one illustration of the conditions that exist, and can any man say he would not lose his patience with tactics of this kind? These conditions are bound to exist where the Referee is as old as Judge Freedman, and use whatever argument you will, you must acknowledge that when a man reaches eighty-one years of age he is incapable of a fair reasoning and cool judgment on questions involving the Bar Association on the one hand and one who would palpably be opposed to their methods on the other; for his interests, his affections and his sympathies would be centered on that association, which had been his business home for some thirty years.

Your petitioner has read two other cases, involving attorneys, who have been before this same Referee, and it is a noticeable fact that they have been censured by the Appellate Division for their discourteous treatment of this Official Referee. I submit in all fairness that if these attorneys were subjected to the same discourteous treatment which I have received thus far, during the hearings of this proceeding, they had good reason to retaliate, for it is pretty hard for a man to think of the Judge's years when his honor and livelihood are at stake, and he would be apt to say something which if he were not so vitally interested he would have left unsaid; for a man would like to be treated a little better than a kicked yellow dog.

I ask your Honorable Body that the witnesses who have attended these hearings for me be heard upon this subject.

Further, I think it is a proper inquiry for your Honorable Body to make, as to who writes the opinions rendered by Judge Freedman, for his age, his attitude, and his expressions make it very plain to anyone who would be vitally interested in such an opinion, that he would be incapable of a fair, unbiased and cool report in such cases. I submit also that the Appellate Division must know that this condition exists, and that in sending cases to the Referee in question they do so fully cognizant that he will go as the weather vane, the way the wind blows.

The Court of Appeals have stated that these proceedings are quasi-criminal, and that the rules of evidence must be followed, but I ask your Honorable Body to look over this evidence, and see if this Referee, as by his oath he is required to do, made the slightest attempt to respect the rules of evidence. Look at the circular exhibits in this matter, which have been introduced on these hearings. Not a scintilla of proof connecting me with them. Look at the contract that was admitted in evidence because Drake and Boynton had taken it to Walker, and upon their bare word. Does this look as if this Referee respected his oath of

office? Is this the result of old age? Then what is it? From his attitude one would imagine that he now believes himself to be more powerful than the State of New York. But as I have stated above I do not wish to characterize here what has transpired before that Referee on these hearings. All I ask of your Honorable Body is that you will listen to the testimony of the witnesses as they state what they have observed as to the way not only I have been treated, but the way they themselves were treated when attending these hearings. It would lead one to suppose that this was more of a star chamber proceeding than anything else.

Again as a further record of the biased attitude here, look at the "eastern potentate" methods displayed by the Referee because it was necessary for him to adjourn a matter for me on account of illness. My assistant called up everyone of whom she knew connected with the matter, including the Referee's office, but was told there they could do nothing. She was referred to Mr. Jackson. As a last resort she called up Jackson, with the result as stated on page 123 of the evidence. The adjournment was given and on page 124 you will find the following:

> The Referee: You better notify him that I order it to be set peremptorily for Friday, February 25th, 1916, and that you will be allowed to go on whether he is here or is not.

I received such notification, and at the next hearing I extended my thanks for the adjournment.

I ask your Honorable Body to ascertain how, and by what means visible or invisible, moneyed powers can frame up charges such as these, and use our Courts, apparently having the assurance that those charges will be made to stick.

How is it that a rank outsider, a moneyed power, can use the Bar Association and the Appellate Division to pry into other people's business, and attempt to abridge the constitutional rights of others to investigate titles, and the constitutional right of our people to free speech, as respects facts and proofs which they have gathered? How can the Appellate Division reconcile these tactics in regard to these proceedings with their declaration in the matter of ..... an attorney, 162 App. Div. 884. At page 887 the court said

> "It is much the duty of this Court to protect lawyers against unjustifiable and malicious attacks upon their integrity as it is to discipline attorneys who have been guilty of misconduct, and not to allow charges of professional misconduct to be used to enforce claims against members of the profession."

So it would seem by this that if the duty of the Appellate Division was as plain before them in this matter as it was when the highly reputable and well known attorney in the above mentioned matter was before them, the charges of misconduct would have been turned against the reputable firm of attorneys who instigated this matter, their representative and their erstwhile clerk, and as above stated they would have taken cognizance of the conspiracy, and have turned it over to the proper authorities for attention.

I charge that this court entertaining and fostering these proceedings is more for the purpose of oppression than for the purpose of upholding the honor and integrity of the profession, for upon all the facts and papers submitted to them it is unjustifiable, and from their method of procedure I have a perfect right to draw the inference that there are other reasons subterranean and invisible that enter into this attitude of the Appellate Division.

When the hearing before the Grievance Committee was brought to a close the train was started for the Appellate Division, and the institution of these proceedings before Referee Freedman tells as plainly as words could that the matter was not even given consideration, they did not even give the engine time to take water, but started for the next switch. Gentlemen that switch was set long before I heard of it, for Assistant United States Attorney Walker testified (see page 107) that Mr. Drake along in the fall told him over the phone that some charges had been preferred against me before the Appellate Division, and that the matter had been referred to Judge Freedman. Nothing like being on the inside. I got that notice for a Christmas present gentlemen. Do you know of anything which would illustrate any keener the minds of those involved in this conspiracy than this act of sending that to a man for a Christmas present?

And now we are at the last switch, all the through signals are set, with this man Drake now in the west making the statement that I am to be disbarred, and with the knowledge that he was on the inside to the extent of knowing in the fall that this matter was to go to Judge Freedman, and so informed Walker, will you say that this prophesy as to my disbarment has not for its foundation a statement from the same source he got his other information. Therefore I ask that you switch me on to a siding, and give me a chance to present my proofs, and hear my witnesses; for it is to the interest of public policy, public justice, not alone to me, but to those I represent. These facts should be brought to light. It is but just that I should have a just and fair hearing as to the law and the facts surrounding the work I am doing, and this cannot possibly be accomplished before Referee Freedman, a man surrounded and bound down as he is by the traditions and usages of this benighted City for so many years. What earthly chance could a man have here, for my demand to be heard on the law would call down a world of abuse and a hurricane of objections and overrulings on my head, and certainly there is but one thing to do to appeal to a higher power, a more just tribunal, than which there could be no better than your Honorable Body.

It was the law in England at the time Trinity claims she got a grant to the King's Farm, that a grant or conveyance made by a party not in possession was a nullity and void, and this has been recognized by the courts of this state as part of the common law. For the purpose of bringing to the attention of your Honorable Body the brand of justice that was administered in the Bogardus case, reported in 4 Sandford, p. 633, I ask you to read the full printed case of Jackson vs. Gunmaer, 2 Cowen p. 552, decided in 1824 (cited 125 App. Div. 345) some seven years before the Bogardus case above cited was instituted, and the cases there cited.

At page 555:

> "That the people were not in possession at the time of their grant is a sufficient defense. They had no title except what they claimed under the deed of the lunatic. This being void the case was the same as if they had previously conveyed all their title to another; and had nothing to grant. The patent would have been void at common law. A sale of lands, holden adversely by commissioners appointed by an order of Court under the act for partition of lands, has been holden void. The people should prosecute their action for ejectment,

and recover possession before they have power to grant.

At page 563:

"Evidence of adverse possession was properly rejected because no one can set up an adverse possession to avoid the grant of the state. This question did not arise nor did the court pretend to dispose of it in Jackson v. Hudson (3 John. Rep. 375) as supposed on the other side. It was put upon the nature of the possession. There was a patent from the state and various conveyances thence down to the lessor, while the Indian possession existed; and the objection of adverse possession applied to these intermediate grants. The court go on to consider the law of adverse possession as it relates to individuals and demonstrate that it was not in that case sufficient to avoid a private grant.

But the people cannot be disseised; nor, consequently their grant avoided by adverse possession. The King cannot be disseised.

* * * *

But the defendant could not set up an adverse possession even as against an individual. Both parties derived title from the same source—the lessor under a title derived from Merritt—the defendant, under a Sheriff's sale upon a judgment against Merritt subsequent to the deed.

Page 565:

"It is conceded that adverse possession avoided a deed at the common law; and we need not therefore resort to the statute. The Government have attempted to grant lands, which, at the common law, they have no power to pass. I agree that the people cannot be disseised; but the very cases to which we are referred on the other side show that they may be out of possession. If an alien purchase lands, the King has a right to it, but he is out of possession, and the land may be holden adversely to him till office found. So of the people. (Jackson v. Beach, 1 John. Cas. 399 etc.) They cannot enter till office found, but when in possession I admit they cannot be disseised; the king cannot change or dispense with the common law (Com. Dig. Prerogative (D. 7) and is therefore subject to the rule which forbids any one to convey unless in possession. In all cases where an entry would be necessary for the subject, an office found is necessary for the King. This is the manner in which he is to enter, and as the same rule applies to his right of entry as to that of the subject, so his right of granting is circumscribed by the same restriction. Another case showing the manner in which the king's right of entry is to be exercised is that of the Wardens and Commonalty of Sadlers (4 Rep. 58). It was there held that where the king's tenant dies when another is in possession at the time of the escheat, there the king shall not be adjudged in possession till the other's seisin and possession are removed.

At page 568:

"The reason which makes a deed void because executed by a grantor out of possession is for avoiding of maintenance suppression of right and stirring up of suits; and, therefore, nothing in action, entry or reentry, can be granted over, for so under color thereof, pretended titles might be granted to great men whereby right may be trodden down and the weak oppressed, which the common law forbiddeth, as **men to grant before they be in possession.**

Now look at page 739 of the Bogardus vs. Trinity case reported in 4 Sandford:

"Whether the letters patent of 1705 were good against the crown or were void, they constituted a written color of title under which the parties entered and claimed to hold the land."

Was Queen Anne in possession at the time Trinity claims she obtained her grant? Were the Bogardus and Trinity grants from the same grantor? Were these questions before the court in the Bogardus vs. Trinity case reported in 4 Sandford, and if not, why?

Was the word "person" in the adverse possession statute ever held to include a corporation, whether religious or otherwise, at least before the enactment in 1892 of the Statutory Construction Law.

Let us go back to our early history — by the Documentary History of the State of New York you will find that the Bogardus were battling for their rights in 1765. The same power which maintained at that time, the same persistency, the same stay-attiveness of purpose, though then perhaps only a small acorn at it were, has grown into a wonderful and sturdy oak, and the descendants of Anneke Jans Bogardus are just as determined now as ever that these facts shall be brought out; that the truth shall be known, and certain it that this work will go on until one day their power shall be as great, and their influence reach as far as this blasphemous corporation, and right must and will prevail.

The fact is established by these decisions which Trinity has cited, that the Bogardus were on this property down to the year 1788. The report of the 4 Sandford case certainly establishes that Trinity claims under color of title, and the courts of this state have held that where one asserts color of title by instrument, that possession only extends to the land actually possessed — that if by mistake or inadvertance one enters on a tract of land different from that which is described in the instrument under which he claims, there will be no constructive possession created (A. & E. Vol. 2, page 539). That where the tract to which the claimant's color of title extends consists of several contiguous parcels to which others hold the paramount title in severalty, the actual possession of part of one of such parcels will not confer on the claimant constructive possession of the entire tract as against the owners of the other parcels (A. & E. Vol. 2, p. 540). Then if it can be shown that Trinity made a mistake and the court was imposed upon by the false claim as to the whole tract being included under the color of title, would the heirs still be entitled to relief in equity.

In the case of Humbert vs. Trinity, 24 Wend. p. 598, on the question of the King's Farm and the Jans Farm being separate tracts, the court used these words:

"The northern boundary was the dividing line between the Duke's Farm and the lands of the complainant and should have been so accurately marked and described as to render the separation entirely obvious to the adjoining proprietors."

But see how the court unmercifully flays Trinity Corporation for her moral transgression.

At page 598:

"Not being definitely limited on the north, this circumstance opened the door for pretending that their grant of the Duke's Farm, comprehended the Bogardus lands; and it was for the fraudulent purpose of following out such pretension by actual encroachments, that they sought to procure the equivocal grant. * * * That the defendants proceeded to act on their original policy by making considerable encroachments prior to the American Revolution. Their course was to take such possessions from time to time as they believed would eventually ripen, into a title. In this way they made a variety of lodgments, though resisted by the Bogardus heirs * * * * Many of them were constrained to abandon their possessions by the defendants' habitual use of menaces, the frequent exercise of actual violence such as pulling down fences and improvements, burning them riotously, threatening suits and imprisonment, and occasionally resorting to the temptation of pecuniary offers. They boasted of their wealth and power and declared that they would never desist from their purpose of getting full possession. In this way the more timid occupants were induced either to quit their possessions or to take title under the defendants."

At page 603:

"In this way it cannot be denied that the bill makes out a case of strong moral transgression,

* * * * * * *"

If I ask a single witness a question as to the merging of these great properties in the proceedings now pending, not one of them can go back of this so-called grant of Queen Anne in 1705. I use the word "can" advisedly, because, perhaps, being either in the employ of Trinity, or so decidedly influenced by its power, they would not dare to attempt to do so. These are the dark pages in the history of our Empire City; not only turned down, but now sought to be obliterated by the methods that are here employed.

Why if there is no merit, is it necessary to send a man, John N. Drake, representative of Trinity Corporation, scouring the country to find persons who are supporting this investigation, in order that he may read to them the decisions of these different cases cited by Trinity for its own purposes? Are they none too sure that somewhere, sometime, somehow the American spirit of fair play will prevail, and that they may be decreed to render to these people whom they have robbed the things that are theirs, and unto God the things that are God's? Of what use it is to read to these people these decisions? Drake has testified they are most of them illiterate, and it would take even an educated layman all his time to understand the law as laid down there. Again, these decisions have more to do with what Trinity did after it stole the property, than how it got it? Has it not been held in this state, and also in the Supreme Court of the United States, that where an owner has been deprived of his property by the fraud and wrongful act of another, a court of equity in respect to his remedy to recover it, will raise a trust in invitum out of the transaction for the purpose of subjecting the substituted property to the purposes of indemnity and recompense. It was so held in this state as late as 1910. What further proof of fraud and malevolent practices could be found that those established by the very cases the witnesses in this proceeding have testified they are familiar with?

I claim every citizen in the United States will be interested in the questions involved, as to the right of a church to transgress its own laws, to profit by that transgression, and to dare to continue to preach the word of God to our citizens. Is there any law which would prevent the state from exercising its police power as the guardian and custodian of the morals of our people to either prohibit religious organizations from pleading adverse possession, which the courts have held to be the disseisin of the true and lawful owner, or prohibit them from preaching the word of God in our midst, as you prohibit corporations from pleading usury.

I say with all sincerity that I know of no law which could prevent my investigation of this title; I know of no law which could prevent my making the facts of that investigation public, and I know of no law which can prevent me stating that I consider Trinity Corporation guilty of moral transgression in taking these properties from their original owner, and, gentlemen, I know of no law which can prevent me from appealing to the people of the United States to ostracize this agency of God; and last, but certainly not least, I know of no law which can prevent me from laying the facts before your Honorable Body for such action as you deem just and proper in the premises.

In conclusion I charge:

First: That the attitude of this court in the DeRaismes case was clearly unexcusable and unjustifiable. That the attitude of this Court (1903-1913) respecting the enforcement of the statutes mentioned in the DeRaismes case warrants the inference that they cannot be relied upon to enforce statutes obnoxious to the large financial interests, knowing, as we all know in this community, that these large financial interests manage and control many foreign corporations doing business in this jurisdiction.

Second: I charge that there is no excuse for any "guess work" to determine the meaning of the statutes before this Court in the DeRaismes case, and if any "guess work" was necessary, it is mete that we should find out why?

Third: I charge that the Bar Association and the Appellate Division ruthlessly shut their eyes to the proposition of law that British alien subjects could not be barred from their rights in this property under the Treaties of 1783 and 1794; that the verification of the petition charging no merit to these claims evidences a brand of "steam roller" justice, excusable only by want of knowledge of the facts.

Fourth: That the act of the Appellate Division and the Bar Association in lending themselves to speculation and assumption as to whether this contract was ever to be signed or any money passed under it, stamps that act with a willingness to permit the use of the Court for the purpose of oppression and malicious prosecution.

That the rule that a complainant must come into court with clean hands entitled me to compel Calligari to disclose the name of his would be investor, described to me as a "Wall Street broker," and in denying me that right, and protecting the witness Calligari, the Bar Association committed itself as a party to a base and unscrupulous conspiracy; that the Appellate Division with these papers before them, in entertaining these proceedings, were cognizant that the prosecutors were not in court with clean hands, and were entitled to no standing whatsoever before them. The first requisite was for the Court and the Bar Association to establish that there was an injured, or to be injured party; but the Bar Association deliberately prevented me ascertaining that fact; that in so doing they established mala fides, and ground for an inference that they knew no such party existed, and just ground for a further inference

that not only was that contract a piece and parcel of a frame up or conspiracy, but that these proceedings are the continuation of that scheme, on which the Grievance Committee placed their stamp of approval by sending it to the Appellate Division.

Fifth: That the Appellate Division, with these facts before them, when asked to send this matter to the prosecuting attorney of this county, and refusing so to do, denied me the protection they themselves have stated it is their sworn duty to afford to attorneys, and thusly permitted the use of this court to maintain this oppressive and unjust prosecution.

I respectfully ask that the matter above referred to have your careful consideration. I urge that there is no better time to mend than the present; no better time to investigate Trinity's corporate standing; that you take cognizance of the fact that Trinity's charter and the Grant were given to The Rector and Inhabitants of the City of New York in Communion, etc.; that the inhabitants of the City were publicly taxed to maintain this church; that it be ascertained to what extent the Crown had the reserve right to revoke or modify this charter, and to what extent the State may Legislate with respect to the subject matters above referred to, to the end that this moral transgression shall cease to the great credit of the State of New York.

Dated, New York City, April 12th, 1916.

COPY

J. N. KIMBALL
Stenographic Expert,
New York.

Mr. W. T. Gridley,
1268 East 10th St.,
Brooklyn, N. Y.

April 5, 1916

Dear Sir:

A rapid examination of the notes in the referee's office yesterday, makes clear the following points:

1. It is almost impossible to conceive of more poorly written notes and while the transcript may be made to fit them, and vice versa, yet the notes can many times be read in so many different ways as to make it difficult, if not impossible, to state that the correct translation has been made.
2. There are many interlineations — words and collections of words, written to aid in furnishing a context. These were inserted without question at the time that the transcript was made, or at any rate, at some time subsequent to the taking of the original notes.
3. There are erasures and in some cases, the places where these erasures are made have been filled in, possibly from the memory of the stenographer — and in other cases, nothing has been placed where the erasures were made.
4. There are notes which have been crossed out and of which not translation is given in the transcript. My judgment would be that in these cases, the stenographer was unable to read the words which have been crossed out.

The above appear from a cursory examination. To go into the notes with the necessary care would require a number of days' work; they should be carefully compared with the transcript word for word, which would take three or four days, for which I would charge $10.00 a day.

Yours truly,
J. N. KIMBALL.

JNK/17

(NOTE: **This refers to the Bar Association minutes.)**

Mrs SCHUYLER FIRING HER CORN FIELDS ON THE APPROACH OF THE BRITISH

Engraved by permission from the original picture in the possession of Chas. M. Leupp Esq.

A

COMMANDMENT!

THOU SHALT NOT BEAR FALSE WITNESS AGAINST THY NEIGHBOR

◇ A ◇

BEATITUDE!

BLESSED ARE YE WHEN MEN SHALL REVILE YOU AND SHALL PERSECUTE YOU!

◇ ◇ ◇

REJOICE AND BE EXCEEDING GLAD!

APPENDIX

APPENDIX

No. 1

Governor Petrus Stuyvesant's Grant, July 4th, 1654.

Petrus Stuyvesant, on behalf of their High Mightinesses the Lords States General of the United Netherlands and the Noble Lords Managers of the Incorporated West India Company, Director General of New Netherland Curacao & the Islands thereof, together with the Noble Lords of the Council, Declare that we on the day of the date underwritten have Given and Granted unto Annetje Jans Widow of Everardus Bogardus deceased, a piece of land lying on the Island Manhatans along the North River, beginning at the Pallisades near the house at the River side and running North by East to the division line of Ols Jan's land two hundred and ten rods, from thence along the said division line East by South to the Swamp, then Southwest 160 rods from the Swamp to the River side, extending West in breadth 50 rods- the land which lays South of the House and East of the division line of the Company's land begins at the Pallisades and runs South to the Post and Rail fence of the Company's land, without obstruction to the road, is in breadth 60 rods in length on the South Side along the Posts and rails 160 rods, on the East Side to the Gate of the Kalckhoeck in breadth 30 rods, in length on the North Side along the Kalckhoeck to the division line of the aforesaid Piece of land running West in length 100 rods Containing together 31 Morgans.

Form 148-1083. 10-13-21-500 (2-137)

State of New York } *ss:*
OFFICE OF THE SECRETARY OF STATE

I have compared the preceding copy of --- Lease --- *with the record thereof in this office, in Book Number* -- 7 --- *of* -- Patents ---- *at page* - 138 -- *and I do hereby certify the same to be a correct transcript therefrom, and of the whole thereof.*

Witness *my hand and the seal of office of the Secretary of State, at the city of Albany, the*-- nineteenth --- *day of* --- April --- *one thousand nine hundred and* twenty-three.

Herman Doctor

No. 2

Last Will of Anneke Jans Bogardus, January 29, 1663.

THE LAST WILL AND TESTAMENT OF ANNEKE JANS, WIDOW OF ROELOFFE JANS, AND LASTLY WIDOW OF THE REV. EVERARDUS BOGARDUS.

In the name of the Lord, Amen: Now all men by these presents, that this day, the 29th of January, 1663, in the afternoon, about 4 o'clock, before me, Dirck Van Schelluyne, Notary Public, in the presence of the witnesses hereafter mentioned, Anneke Jans, widow of Roeloffe Jans, of Masterland, and now lastly widow of the Rev. Everardus Bogardus, residing in the village of Beverwyck, and well known to us, Notary and witnesses; the said Anneke Jans laying on her bed in a state of sickness, but perfectly sensible, and in the full possession of her mental powers and capable to testate, to which state of mind we can fully testify, the said Anneke Jans, considering the shortness of life, the certainty of death, and the uncertainty of the hour of time, she, the said Anneke Jans, declaired, after due consideration, without any persuasion, compulsion, or retraction, this present document to be her last will and testament, in manner following: First of all recommending her immortal soul to the Almighty God, her Creator and Redeemer, and consigning her body to Christian burial, and herewith revoking and annulling all prior testimony disposition of any kind whatsoever. And now proceeding anew, she declaired to nominate and institute, as her sole and unversial heirs, her children, viz.: Sarah Roeloffsen, wife of Hans Kierstede; Katrina Roeloffsen, wifeof Johannes Van Brugh; also Jannetje and Rachel Hartgers, the children of her deceased daughter, Fytje Roeloffsen, during her lifetime the wife of Pieter Hartgers, representing together their mother's place; also her son, Jan Roeloffsen; and, finally, William, Cornelis, Jonas, and Pieter Bogardus, and to them to bequeath all her real estate, chattles, credits, moneys, gold, silver, coined and uncoined, jewels, cloths, linen, woollen, household furniture, and all property whatsoever, without reserve or restriction of any kind, to be disposed of after her deceased,

and divided by them in equal shares, to do with the same at their own will and pleasure, without any hindrance whatsoever. Provided, nevertheless, with this expressed condition and restriction, that her four first-born children shall divide between them out of their property, the sum of 1,000 guilders, to be paid to them out of the proceeds of a certain farm situated on Manhattan Island, bounded on the North river, and that before any other dividend takes place; and as three of these children at the time of their marriage received certain donations, and as Jan Roeloffsen is yet unmarried, he is to receive a bed, and a milch cow; and to Jonas and Pieter Poularius, she gives a house and lot, situated to the westward of the house of her, the tesatrix, in the village of Beverwyck, going in length until the end of bleaching spot, and in breadth, up to the room of her the testrix's house, besides a bed to each of them, and a milch cow to each of them, the above to be an equivalent of what the married children have received.

Finally, she the testatrix gives to Roeloffe Kierstede, the child of her daughter Sarah, a silver mug; to Annatie Van Brugh, the child of her daughter Katrina, also a silver mug, and to Jannetje and Rachel Hartjers, the children of her daughter Fijtje, also a silver mug; all the above donations to be provided for out of the first moneys received, and afterwards the remainder of the property to be divided and shared as aforesaid. The testatrix declairs this document to be her only true last will and testament, and desiring that after her deceased it may supersede all other testaments, codicils, donations, or any other instrument whatsoever; and in case any formalities may have been ommitted, it is her will and desire the same benefit may accrue as if they actually had been observed; and she requested me, Notary Public, to make one or more lawful instruments, in the usual form of this, the testatrix's last will and desire.

Signed, sealed and delivered, at the house of the testatrix, in the village of Beverwyck, in New Netherland, in the presence of Ruth Jacobse Van Schoonderwert, and Evert Wendel, witnesses.

This is the mark + A. B. of Anneke Jans with her own hand.

Rutger Jacobse.
Evert Janse Wendell.

D. VAN SCHELLUYNE,
Notary Public, 1663.

4. 1000-1-1-11

State of New York,
COUNTY OF ALBANY, CLERK'S OFFICE. } ss:

I, WILLIAM J. GRATTAN, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, Do Hereby Certify, that I have compared the annexed copy of Will with the record of original thereof; recorded in this office on the ..... day of ..... 191 , at ..... hours ..... M., in Book No. 1 of Notarial Papers on page 296 etc., and that same is correct transcript therefrom, and of the whole of said record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this 25th day of april, 1912

Wm J Grattan Clerk.

Lith by H.H. Richardson — for D. T. Valentine's Manual

CORNER OF BROAD AND BARGES STREETS.
As it appeared 50 years ago

No. 3
Governor Richard Nicolls Confirmation Grant,
March 27, 1667.

A Confirmation of a Parcell of Land on Manhatans Island Graunted to ye Children of Anneke Bogardus.

RICHARD NICOLLS Esqr &c WHEREAS there is a Certaine Parcell of Land lying on this Island Manhatans towards the North River which in the Yeare 1636 was the Land and Bowery of Anna Bogardus to whom and her Husband Roeloffe Jansen it was first Graunted by the then Dutch Governo^r Walter van Twiller at which time the said Roeloffe Jansen first began to Manure the said Lands and to Build there upon the Limitts whereof did then begin from the ffence of the House by the Strand side so runing North East to the ffence of old Jans Land its in Length two hundred and ten Rod then going along the ffence of the sd old Jans Land South East it reacheth to a certaine Swamp & is in Breadth one hundred Rod and Striking along ye Swamp South West its in Length one hundred and Sixty Rod And from the Swamp to the Strand going West its in Breadth fifty Rod the Land lying on the South side of the House to ye ffence of the Land belonging to the Company and so to the East side begins at the ffence and goes South to the Posts and Rayles of the Companys Land without any hindrance of the Path its in Breadth Sixty Rod in Length on the Southside along the Posts and Rayles one hundred and Sixty Rod on the East side to the Entrance of the Chalke Hooke in Breadth thirty Rod and along the said Chalkie Hooke on the Northside to the ffence of the Land before menconed going West is in Length one hundred Rod Amounting inall to about Sixty two Acres ffor which said Parcell of Land Anneke Jans the Widdow and Relict of Domini Everardus Bogardus had heretofore a Patent or Groundbriefe from the late Dutch Governo^r Petrus Stuyvesant bearing date the 4th day of July 1654 Now for a Confirmacon unto the Children and Heires of the sd Anneke Bogardus in their Possession and Enjoym^t of the P^rmisses KNOW YEE that

by vertue of the Commission and Authority unto mee given by his Royall Highnesse I have Ratified Confirmed & Graunted and by these pnts do Ratify Confirme & Graunt unto ye Children and Heires of Anneke Bogardus decd the afore recited Parcell of Land & P^r misses with all and Singular their Appurtenances To have and to hold the said Parcell of Land and P^r misses unto ye Children and Heires of the said Anneke Bogardus their Heires and Assignes unto the proper use and behoofe of the said Children and Heires their Heires and Assignes forever Rendring & Paying &c Dated the 27th March 1667.

R. NICOLLS.

I do hereby Certify the aforegoing to be a true Copy of the Original Record. Compared therewith By Me.

LEWIS A: SCOTT. Secretary.

259-B

State of New York, } ss:
OFFICE OF THE SECRETARY OF STATE.

I have compared the preceding copy of letters-patent --- *with the record thereof in this office, in Book Number* -- 4 -- *of* --- patents --- *at page* - 28 -- *and I do hereby certify the same to be a correct transcript therefrom, and of the whole thereof.*

Witness *my hand and the seal of office of the Secretary of State, at the City of Albany, the* --- eighteenth - *day of* ---- November - *one thousand nine hundred and* thirteen.

Deputy *Secretary of State.*

No. 4

Queen Anne Grant to Trinity, November 23, 1705.

ANNE by the Grace of God of England Scotland France & Ireland Queen Defender of the faith &c TO ALL to whome these prsents shall come or may Concern Send Greeting WHEREAS ye Rector and Inhabitants of ye City of New York in Communion of ye Church of England as by the Law Establishd were (by an Act of Assembly made in the third Year of or Reigne Entituled an Act Granting Sundry Priveledges and Powers to ye Rector and Inhabitants of ye City of New York of the Communion of ye Church of England as by ye Law Establishd) Incorporated by ye Name of ye Rector & Inhabitants of ye City of New York in Communion of ye Chuch of England as by Law Establish'd and made prsons Capable in ye Law to Sue or to be Sued in any Accon or matter whatsoever and by that Name they & their Successors Should hold and Enjoy ye Church there Called Trinity Church burying Place and Land thereunto belonging by whatsoever Name or Names ye same were Purchased and had & that ye sd Rector & Inhabitants & their Successors by ye same Name from thence forward should have Good Right & Lawfull Authority To have take Receive Acquire and Purchase and use & Enjoy Lands Tenements and Hereditamts Goods & Chattles & To Demise Lease and Improve the sd Lands Tenemts and Hereditamts & to use and Improve such Goods and Chattles to ye Benefitt of the said Church and other pious uses not Exceeding ffive hundred Pounds Yearly Rents or Income wch Diverse other Priveledges and Powers to them the sd Rector and Inhabitants and their Successors as by the sd Recited Act more at Large it Doth & may Appear AND WHEREAS the sd Rector & Inhabitants of ye sd Citty of New Yorke in Communion of the Church of England as by Law Established by their Petiticon to or Right Trusty and welbeloved Cousin Edward Viscount Cornbury or Capt Genll & Govr in Cheife in and over or Province of New York and Territories thereon Depending in America and Vice

Admirall of ye same HAVE humbly prayed that wee would Grant & Confirm unto them and their Successo^{rs} for the use of ye sd Church ALL those of Severall Closes Peeces & Parcels of Land Meadows & Pastures formerly Called ye Dukes Farme & the Kings Farme and now known by the Name of the Queens Farme with all & Singular ye fences Inclosures Improvem^{ts} and Appurtenances whatsoever thereunto belonging as ye same are now in ye Occupacon of and Enjoyed by George Ryerse of ye Citty of New York Yeoman or by any former Tennant Scituate lying and being on ye Island Manhattans in ye Citty of New York aforesaid and bounded on the East Partly by the Broadway Partly by the Common and Partly by ye Swamp and on ye West by Hudsons River AND ALSO all that our Peece or Parcell of Ground Scituate & Being on ye South side of ye Church Yard of Trinity Church aforesaid Commonly Called or knowne by the Name of ye Queens Garden fronting to ye sd Broadway on the East and Extending to Low Water marke upon Hudson River on the West All wch sd p^{r}misses are now Lett at the Yearly Rent of thirty Pounds which Reasonable Request WEE being willing to Grant KNOW YEE that of our Especiall Grace Certaine Knowledge & meer mocon WEE have Given Granted Rattified and Confirmed in and by these p^{r}sents for o^{r}selfe o^{r} Heirs and Successo^{rs} WEE do Give Grant Rattify and Confirm unto the sd Recto^{r} & Inhabitants of ye Citty of New York in Communion of ye Church of England as by Law Establish'd & their Successo^{rs} ALL & Singular ye sd Farme Lands Tenements and Hereditam^{ts} herein before menconed as the same are herein before Particularly Set forth wth ye Appurtenances & every Part and Parcell thereof or thereunto belonging or Accepted Reputed or taken as Part Parcell or member thereof as ye same now are held Occupyed and Enjoyed by the sd George Ryerse or have been heretofore Occupy'd and Enjoyed by any former Tennant or Tenn^{ts} & all Rents Arrearages of Rents

Issues and Proffitts thereof and of every or any Part or Parcell thereof together with all woods Underwoods Trees Timber wch now are Standing & Growing or which hereafter shall Stand & Grow in & upon ye Prmisses hereby Granted or any Part thereof & all feedings Pastures Meadows Marshes Swamps Ponds Pooles Waters Watercourses Rivers Rivoletts Runs and Streams of Water Brooks fishing fouling Hawking Hunting Mines and Mineralls and all and Singular ye ways Passages Easements Profitts Commodities feedings benefitts Privileds-es Improvemts Advantages Hereditamts Comoditiee and Appurtenances whatsoever to ye sd Farme Several Closes Peeces & Parcells of Land and Premisses belonging or in any wise of Right Appertaining (Except and always Reserved out of this our Prsent Grant all Gold & Silver Mines) TO HAVE & TO HOLD the sd Farme Severall Closes Peeces & Parcells of Land & Prmisses herein before Granted & Confirmed or meant mensoned or Intended to be hereby Granted & Confirmed wth their and every of their Appurtenances (Except before Excepted) unto ye sd Rector & Inhabitants of ye Citty of New York in Communion of the Church of England as by Law Establish'd and their Successors to and for ye only Proper use and behoofe of the sd Rector & Inhabitants of ye Citty of New York in Communion of the Church of England as by Law Establisht and their Successors forever TO BE HOLDEN of us or Heirs & Successors in free & Common Soccage as of or manor of East Greenwich in or County of Kent within our Kingdome of England YEILDING Rendring & Paying therefore Yearly and every Year unto us or Heirs & Successors at or Citty of New York aforesaid to our Collector & Receivr Generall there for ye time being on ye Feast of the Nativity of or Blessed Saviour the Yearly Rent of three Shillings Currant Money of New York in Liew and Stead of all other Rents Services Dues Duties and Demands whatsoever PROVIDED always & this or prsent Grant is

upon this Condicon that if our Captain Generall & Govr in Cheife for ye time being of our sd Province of New York shall at any time hereafter Cease or forbear ye yearly Payment of Six & twenty Pounds for ye House Rent of ye Rector or Minist^{r} of Trinity Church of New York aforesaid wch is now paid out of our Revenue in ye sd Province and at such time no Suitable House shall be Erected & Built for ye p^{r}per use & Convenient Dwelling of ye Recto^{r} of ye sd Church for ye time being y^{t} then ye sd Rector and Inhabitants of ye sd City of New York in Communion of ye Church of England as by Law Establisht & their Successo^{rs} shall from thence forth Yearly and every Year out of ye Rents & Profitts of ye hereinbefore Granted Lands & P^{r}misses Pay & Discharge the same for & untill such Suitable House shall be Erected and Built for the p^{r}per use & Convenient Dwelling of the Recto^{r} of ye sd Church for ye time being any thing hereinbefore in this o^{r} Grant Conteined to ye Contrary thereof in any wise Notwithstanding IN TESTIMONY whereof we have Caused these our Letters to be made Pattents and the Seale of our sd Province of New York to our sd Letters Pattents to be affixed and ye same to be Recorded in ye Secretary's Office of our sd Province WITNES o^{r} Right Trusty and welbeloved Cosen Edward Viscount Cornbury Capt Gen^{ll} & Govr in Cheife in and over our Province aforesaid & Territories Depending thereon in America & Vice Admirall of ye same &c In Council at our Fort in New York aforesd the three & twentieth Day of Novem^{r} in ye ffourth Year of o^{r} Reigne Annoq Dm 1705.

I do hereby Certify the aforegoing to be a true Copy of the Original Record. Part of the word herein 30th line of Page 340 being written on an Erazure. COMPARED therewith By Me.

LEWIS A: SCOTT. Secretary.

No. 5

Lovelace Transcript, March 9th, 1670/71

Anno 1670
71 March the 9th Have Johannes Van Brugh in right of Catrina Roelofsen, his wife, and atturny of Pieter Hartgers; Willem Bogardus for himself and his brothers Jan Roelofsen & Jonas Bogardus; and Cornelis Van Borsum in right of Sara Roelofs, his wife, and by assignment of Peter Bogardus, all children and lawful heirs of Annetie Roelofs, late widdow of Dom. Bogardus, deceased, for a valluable concideration transported & made over unto the Right Honnble Collonel Francis Lovelace, his heirs & assigns, their farme or Bouwery commonly called or knowne by the name of Domenees Bouwery, lying & being on Manhatans Island towards the North River, the quantity of ye land amounting to about sixty two acres, as in the former groundbriefs from Govern. Stuyvesant bearing date the 4th day of July 1654; and the confirmation theruppon from Gov. R. Nicolls bearing date ye 27th of March 1667 is more particularly set forth, which transport was signed by them and acknowledged before the Aldermen Mr. Olof Stevensen Cortlant & Mr. John Lawrence.

REGISTER'S OFFICE

COUNTY OF NEW YORK, STATE OF NEW YORK

I, MAX S. GRIFENHAGEN, Register of the said County, have compared the annexed copy with an instrument Recorded

in this office, on the ..... day of ..... A. D. .....

at ..... o'clock ..... min. ..... M. Book of Deeds from year 1665 to 1672 page 122

and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 9th day of January 1913

JMB.
R.F.G.

Max S. Grifenhagen
REGISTER

2126-12-3000 (C)

No. 6

Bogardus vs. Trinity, 4 Sandford.

NATHANIEL BOGARDUS and others *v.* THE RECTOR, [633] CHURCH-WARDENS AND VESTRYMEN OF TRINITY CHURCH IN THE CITY OF NEW YORK, WILLIAM BERRIAN, AND WILLIAM JOHNSON.* Rep. 4 Sanford: 633.

* For a *Table of Contents* of this voluminous case, see note at the end of the case.

In ascertaining facts relative to the possession and claim of lands, which occurred more than a century prior to the inquiry, courts receive evidence, which would be inadmissible, if offered to prove events occurring within the period of the memory of living witnesses.

In such cases, the statements of historians of established merit, (as to facts of a public and general nature;) the recitals in public records, in statutes and legislative journals; the proceedings in courts of justice, and their averments and results; and the depositions of witnesses in suits or legal controversies, are received as evidence of facts to which they relate; but always with great caution, and with due allowance for its imperfection and its capability of misleading.

On this principle, the parties were allowed to read in evidence, the clerk's minutes of a trial had eighty-five years previous, affecting the possession of the same land; depositions or affidavits taken before a judge, ninety-four years previous, also sixty years previous, apparently for use in a judicial proceeding respecting the possession, recitals, boundaries and designations touching the same land, contained in statutes and public grants and charters; other proofs of a name or designation, commonly and notoriously applied to the land in question; ancient maps and the descriptions and delineations thereon; and an authentic history of the province at large.

In proving an ancient possession and its character, the counterparts of leases executed by tenants to the party claiming to have been in possession, produced from the proper custody, are admissible in evidence, without any proof of the execution of the corresponding lease executed by the landlord.

Letters patent of land, are emanations from the sovereign power, the evidences of the pleasure or bounty of the government, and are attested by the governmental authorities, as public acts.

Being *alienations by matter of record*, letters patent do not require the signature of the sovereign or the governor to render them valid. The *grant* is of record in the government offices; the letters patent are a transcript of the grant, authenticated by the great seal.

In grants of lands by the colonial governors, they did not act as mere private attorneys or agents of the sovereign. They were executing the sovereign power, as viceroys or representatives, in the name of the king, and in the same forms as if they had been executed by him.

In the colonial legislation, statutes enacted by the [634] assembly and approved by the governor and council, were valid and operative immediately; they continued in force unless they were disapproved by the king, and upon that happening, they became annulled.

Rights which were acquired under a colonial statute, after its passage, and before it was disapproved by the sovereign, were not abrogated or impaired by such disapproval.

Where one enters upon land, under a deed in terms conveying the whole in fee, executed by several persons described as heirs of the party last seised; the presumption of law is that he entered in severalty, claiming the whole land in fee adversely to all the world; although it should be made to appear that there were other heirs, tenants in common with his grantors, who did not execute such deed.

To found the defence of adverse enjoyment under a claim of title, it is immaterial whether the claim be made under a deed valid in form, or under one wanting in all the essentials of a proper conveyance.

An actual occupancy by one claiming the title, is a good adverse possession, without any written evidence of title.

Where land has been held in possession for eighty years under a grant of the whole, claiming the whole title; the title thus acquired, cannot be shaken or impaired by an admission made by its then owner, that the grantor in such original grant, was only a tenant in common, nor by proof of the fact that he was such tenant in common.

A title, which has become perfect by an adverse possession extending beyond the period of limitation, is not affected by an entry made by one who by descent is the owner of the true title which is thereby barred.

The latter, if he maintained his entry, would be turned out in an ejectment, on proof of the title by adverse possession.

Such an entry differs in no respect from that of a stranger to the title. If made upon a tenement temporarily vacant, the party is an intruder; if by the consent or yielding up of a tenant, the possession of the landlord is not disturbed.

An entry into land, is not valid as a claim, unless an action be commenced thereon within one year after it is made, and within twenty years from the time when the right to make such entry accrued or descended. Such has been the rule of law for two hundred years, and it is now a statutory provision.

Where a corporation whose income is limited by its charter, receives a grant of land of an annual value below such limit; its title to the same is not affected by the subsequent increase of the income therefrom to a point beyond the chartered limitation.

If the income exceed the prescribed limit at the time of the grant, it is a question between the corporation and the sovereign power, in which individuals have no concern, and of which they cannot avail themselves in any mode against the corporation.

Where there are negative averments in a plea for adverse possession claiming title in severalty, to the effect that the defendant has never paid or accounted for any rent or profits, and has never held or possessed the land in common, or undivided, &c., the principal burden of proof is upon the complainants. The defendants are only bound to raise a presumption from their acts in respect of the property, its use and disposal, that no such facts exist; which [635] presumption must be rebutted by proof on the other side.

In support of a plea in equity, the defendants are bound to prove only its substance, and to such an extent as will maintain the bar which it interposes to the suit.

Where the defence stated in the plea, was an adverse possession under a claim of title exclusive of any other right, for a period of one hundred and twenty-five years before the suit; the legal point of the defence is, that the defendant has maintained such possession long enough to bar a writ of right; and proof of such a possession and claim for sixty years anterior to the revolution, was held to support the

plea. And the like proof for forty-four years next preceeding the suit, was held to support the plea, irrespective of the prior possession.

Argued, Dec. 26, 27, 29, 30, 31, 1845; January 3; February 2, 3, 4, 5, 6, 7 and 9, 1846; and January 20, 1847;
Decided June 23, 1847.

The bill in this cause was filed by John Bogardus, on the **11th day of December, 1830.** William Berrian was made defendant, as the rector of the church, and William Johnson, as the comptroller. The defendants, in **October, 1831, put in the plea and answer hereinafter set forth.** The cause was brought to a hearing on the sufficiency of the plea, at the October term, 1831, before the chancellor, by whom it was allowed, on the sixth of August, 1833. *(Bogardus* v. *Trinity Church,* 4 Paige, 178.*)* In the meantime, on the 8th of March, 1833, the complainant died, and on **the 23rd of October, 1834,** the suit was revived on a bill of revivor, in behalf of his heirs. The decree allowing the plea having been entered as of November 4th, 1831, the complainants in the revived suit appealed to the court for the correction of errors, where the decree was affirmed in December, 1835. (15 Wend. 111.) The complainants then took issue upon the plea, by filing a replication. Proofs were taken on both sides, and the cause was finally **brought to a hearing in December, 1845, and February, 1846,** before Assistant Vice-Chancellor Sandford. His decision was suspended on the occasion mentioned in the report of the interlocutory application, *ante* page 369, until after he became vice-chancellor, **and it was finally submitted to him in January, 1847.** Besides the documentary evidence and proofs taken in the usual mode before the examiner, many witnesses were examined in open court during the progress of the hearing, which occupied thirteen days. The great magnitude of the claim made by [636] the suit, and the historical interest of the case, furnish the reasons for reporting it somewhat at large.

THE BILL set forth that the complainant, John Bogardus, of the city of New York, is a descendant of the paternal line from Cornelius Bogardus, one of the sons of Everardus Bogardus and Anneke Jans, his wife; and as such is entitled in equity to a portion of large sums received by the ecclesiastical corporation in that city, called Trinity Church, on leases and sales of real estate, as trustee for the complainant; and to be secured in respect of further receipts on such leases and grants.

That his ancestors, before named, were the same persons intended by the names "Dominie Everardus and Anneke Jans, the widow and relict of Dominie Everardus Bogardus," in a certain deed, executed by Richard Nicolls, governor of the province of New York, dated March 27, 1667, and duly recorded in the secretary's office; by which deed the governor, acting for the Duke of York, pursuant to the article in the Dutch capitulation of August 27, 1664, confirming and securing all existing titles to real estate, acknowledged the right and title of the children of Anneke Jans to have and to hold the lands therein described, in their demesne as of fee as tenants in common, and did grant and confirm such title to her children.

That Anneke Jans died in 1663, leaving seven children, and two grandchildren by a deceased child, all of whom were named in her will as follows: Sarah Roeloffe, wife of Hans Kiersted; Catharine Roeloffe, wife of Johannes Van Brugh; **Jannettee and Rachel Hartgers, children of Anneke's deceased daughter, Sytie Roeloffe, wife of Peter Hartgers;** Jans Roeloffe, and Wilhelmn, Cornelius, Jonas and Peter Bogardus. That Anneke Jans devised the real estate before mentioned to those persons as her heirs, she having survived her first husband, Roeloffe Jans, as well as her second husband, E. Bogardus. That such real estate is the same as that described in a transfer or conveyance to Francis Lovelace, dated March 9, 1670-71 and recorded in book No. A of transports, begun in 1665, at page 122, in the clerk's office of the city and county of New York, executed by certain of the heirs of Anneke therein named, under which [637] instrument Trinity Church has claimed to hold by certain mesne conveyances after stated, all the rights, shares, and titles to the lands by such instrument conveyed, intended or described.

That the church made such their claims in writing, in the words following, viz.:

"New York, 2nd December, 1785. Gentlemen, we take the earliest opportunity of communicating to you the enclosed copy of the record of a transfer to governor Lovelace of Dominie's Hook, from the heirs of Annetje Bogardus, and to which, though afterwards granted by government to Trinity Church, you now claim to have inherited from them. Time and long uninterrupted possession had, it seems, worn away the memory of this transfer, and the evidence of it would probably still have remained dormant, if Mr. De Hart (who is deeply interested in your claims,) had not accidentally discovered this record, and from a regard to justice, which does him great honor, made it known." That the written claim was addressed to certain agents for the heirs of Anneke Bogardus, and was signed by "James Duane, John Jay, Wm. Duer, John Rutherford, James Farquhar," as "a committee of Trinity Church for managing their controversy with the heirs of Anneke Bogardus."

That the enclosed copy of the record of transfer to "Governor Lovelace," was in the words and figures following, viz.:

"Anno 1670-71, March the 9th, Hare Johannes Van Brugh, in right of Catrina Roeloss, his wife, **and attorney of Pieter Hartgers,** William Bogardus, for himself and his brothers Jan Roelossen and Jonas Bogardus and Cornelius Van Bursen, in right of Sarah Roeloss, his wife, and by **assignment of Peter Bogardus,** all children and lawful heirs of Annetie Roeloss, late widow of Dominie Bogardus, deceased, for a valuable consideration, transported and made over unto the right Honorable Colonel Francis Lovelace, his heirs and assigns, their farm or bouwery, commonly called or known by the name of Domenee's Bouwery, lying and being on Manhattan's Island, towards the North River, the quantity of ye land amounting to about sixty-two acres, as in the former ground brief from Governor Stuyvesant, bearing date the 4th day of July, 1651, and the confirmation thereupon from Governor R. Nicolls, bearing date ye [638] 27th of March, 1667, is more particularly set forth; **which transport was signed by them and acknowledged before the alderman, Mr. Alof Stevenson,——— Cortlandt and Mr. John Lawrence.**

"A true copy from lib. No. A, of transports, begun in 1665, page 122, in the clerk's office of the city and county of New York, executed by Rob't. Benson, clerk."

That such committee was duly authorized by the corporation of Trinity Church, to make such claim, and made it in their behalf; and thereby the corporation in effect claimed to have and to hold all the rights, titles and shares, which the grantors therein had in the lands described; the corporation claiming to have the same by the mesne conveyances of the grant of Queen Anne, or the government of England, referred to in such written claim, to whom as the corporation asserted, such rights and titles were transferred by the

deed or transport, and from whom they were granted to the corporation.

That the corporation on or about the 23d of November, 1705, by their corporate name of "The Rector and Inhabitants of the city of New York, in communion of the Protestant Church of England, established by law," accepted and received the letters patent and grant of Queen Anne, bearing that date, executed by Edward, Viscount Cornbury, then captain-general and governor of the province of New York, delivered to the corporation and duly recorded in the office of the secretary of state. By which grant, there was conveyed to that corporation, all that parcel of land situated on the Manhattan Island, now city of New York, then known by the name of *Duke's farm, King's farm, or Queen's farm,* and bounded on the east partly by a street called the Broad Way, partly by the common, and party by the swamp, and on the west by Hudson's river.

The bill further stated that this grant was the one referred to in the above written claim, and in its description are included the lands described in the transport to Gov. Lovelace, and the corporation under and through the latter claimed all the rights and titles conveyed by the deed of transport.

That Cornelius, the son and heir of Anneke Jans, was not a party to that instrument, and did not then, nor at any time, ever transfer his right and portion in the real estate therein described, and his right and title were [639] not transferred to Gov. Lovelace, and never passed to or were vested in the government of England; nor was such right included in, or granted, nor did it pass by the letters patent of Queen Anne; but the same remained in him until his death, at which time he was seised and possessed in fee of one undivided sixth of the premises in the deed of confirmation described, his brother Jans or Jonas, and his half brother, Jans Roeloffe having died intestate and without issue. And being so seised as tenant in common with the corporation, Cornelius died the 13th of October, 1707, leaving surviving his eldest son, Cornelius, who thereupon became seised and possessed of such sixth part as tenant in common with the church corporation; and on his death, November 27th, 1759, his sixth part descended to and became vested in his eldest son Cornelius. The latter thereupon became seised in fee in common with the corporation, and being so seised, *taking certain esplees and profits of the premises in his lifetime,* died intestate, November 23, 1794, leaving five children, including the complainant, to whom his sixth descended equally, and the complainant thus became seised of one thirtieth, as tenant in common with the corporation and his brothers and sisters.

The bill further stated that the premises described in Gov. Nicolls' confirmation, consisted of two parcels of land, of which the landmarks are in part removed or lost, but the corporation have by ancient surveys, maps, &c., certain knowledge of the limits of those two parcels which are described as containing sixty-two acres; or else they have been removed and obliterated by the act of the corporation, who for a long time have had the care and management of those real estates, *receiving the rents and profits, as well for the use of the complainant as for themselves.* That one of those parcels, according to its present or modern limits, consists of all that real estate bounded as follows, viz: beginning at the western extremity of the south side of Warren street, that street to Broadway, thence running by the west side of Broadway to the southwest corner of Duane street, thence running by the south side of Duane street, west to low water mark in the North river, and thence by the low [640] water mark south to the place of beginning. As to the other parcel, the boundaries have been removed by the corporation, but the same are known to its officers and agents.

That in the year 1705, the church corporation entered upon those real estates, under the instrument of transport by those heirs of Anneke Jans, and under the letters patent and grant of Queen Anne, and thereby became seised of the title of those who conveyed by the transport and became tenant in common with Cornelius Bogardus, son of Anneke; and thereafter held the estate as such tenant in common, with the successive heirs of Cornelius.

That the church corporation executed to many different persons numerous leases of parts of those real estates, reserving to the corporation large rents which they have received ever since; and have sold and conveyed large parcels to divers persons for large sums, paid to the corporation. That the rents and consideration moneys were received as trustee for the complainant and his ancestors, in respect of their undivided share of the estate.

That Trinity Church was incorporated May 6th, 1697, by a charter granted by Gov. Fletcher; which was confirmed by an act of the colonial assembly, passed June 27, 1704. The name of the corporation was altered March 10, 1788, by an act of the legislature, and again by an act of 25 January, 1814, to its present title. By the charter of 1697, the real estate of the corporation was limited to £5,000, annual value; but the act of 1704 reduced it to £500, which provision has ever since been in force. The corporation accepted the latter act, especially as it is recited in the Queen's grant, under which they hold the lands in question.

That by the royal charter, there was granted to the corporation a large parcel of real estate situate in or near to a street without the north gate of the then city of New York, commonly called the Broad Way, containing 310 feet in breadth on that street, and extending to Hudson's river; a part of which land was then enclosed for a cemetery or churchyard, and the residue as now situated between Rector and Thames street, and between Lumber street and the North river, is covered with more than one hundred dwelling houses, warehouses, shops and wharves, [641] exceeding now the yearly value of £5,000, and exceeding in 1785 the yearly value of £500.

That by letters patent, of Queen Anne, the whole of the King's farm, (including Cornelius Bogardus share,) and also the king's or queen's garden, so called, were granted to the corporation, the latter lying south of the tract granted in the charter and extending to the Hudson river. Both of these parcels are in like manner covered with costly dwellings, warehouses, shops and wharves, which in 1785 and ever since, exceeded the yearly value of £500. The bill alleged that the property of the church corporation at this time exceeds five millions of dollars, and yields a yearly income of more than three hundred thousand dollars.

That the corporation have never been able or capable, in law, of receiving for their own use, more than £500, yearly, and from the time when their income became equal to that sum, they became and were incapable in law of acquiring by ouster or dispossession or disseisin of the complainant, or any of his ancestors, any right, title or interest in his or their share, or portion in the real estates so granted to the corporation by Queen Anne, and incapable of receiving and applying to their own use, any of the moneys received by them proceeding from those estates, over and above the shares of the heirs of Annneke Jans, who conveyed to Gov. Lovelace; but such surplus was received as trustee for the

complainant and his ancestors respectively, and he is entitled to one thirtieth part thereof.

The bill then stated the refusal of the corporation and the other defendants to account, and various pretences are set forth.

The bill then prays for a discovery of records, documents, resolutions, and all pertaining to the facts charged; for an account of the rents, profits, sales and receipts, and payment of one thirtieth to the complainant; a statement of all the subsisting leases, and of the lands sold and remaining unsold; and for general relief.

THE PLEA and ANSWER of the defendants were put in jointly. The plea was interposed to all the relief prayed by the bill; and to all the discovery, except the seven following matters, viz: 1. The supposed entry of the corpora- [642] tion into the lands formerly called the Dominie's Bowery under the instrument of transport mentioned in the bill. 2. The alleged seisin, possession or holding of the corporation of those lands or any part of them, under that deed of transport, in common and undivided with the complainant or any of his ancestors. 3. The like as to those lands or any interest or estate therein, under the transport, or under the deed of confirmation stated in the bill, in common and undivided, &c. 4. The alleged receipt of any rents, issues or profits, avails or proceeds, arising out of those lands or any part thereof, in trust, to or for the use of the complainant or any of his ancestors. 5. The alleged seisin by the complainant or any of his ancestors, of any estate, interest, or share, in common and undivided, with the corporation, of or in those parcels of land, or to the taking of certain of the issues and profits thereof by Cornelius, the complainant's father. 6. The written communication stated to have been made by William Duane and others. 7. The certified copy of the record of transport inclosed therein; and 8. As to the alleged authority of Messrs. Daune and others and the intent of the communication.

As to these eight subjects, the answer accompanying and supporting the plea contained a general and particular traverse of the five first; **denying among other things, that the corporation ever entered or claimed under the deed of transport or under the deed of confirmation, or under any of the children or heirs of Anneke Jans;** or that the corporation was ever a tenant in common with the complainant or any of his ancestors, or that by itself or its officers or agents, it had ever admitted that it was such tenant in common; or that the corporation had received the rents, profits, proceeds or avails of the premises or any part thereof, as tenant in common with the complainant or any of his ancestors, or in trust for any or either of them; or ever paid over or accounted therefore; or had ever admitted that he or they or any of them had any right, title or interest in the premises, or in the rents, profits or proceeds thereof; or that the father of the complainant ever took any esplees or profits of the premises in common with the corporation; or that the complainant or any of his ancestors, ever entered upon or became seised of any estate, interest or share, in com- [643] mon and undivided with the corporation. As to the communication from the committee, set forth in the bill, the answer stated, that the persons named did make such a communication in the form of a letter addressed to two agents for the claimants of Dominie's Hook, under the heirs of Anneke Bogardus; and that there was inclosed in such letter a certified copy of the record of transport to Francis Lovelace set forth in the bill.

That those persons were a committee of the vestry of the corporation, to defend its rights to a part of the king's farm, against a claim then recently set up on behalf of such heirs. **That the committee had no authority from the corporation, except that resulting from such appointment as committee; and the defendants submit whether it authorized them to communicate the transport to such agents.**

That when speaking of **Dominie's Hook** as having been granted to Trinity Church by the government, the committee referred to the letters patent by Queen Anne for the king's farm.

The defendants denied that the committee were authorized by the corporation to claim or set up in any way that the corporation ever held, had or claimed at any time, any part of the Dominie's Bowery, or any share or interest therein, under the instrument of transport, or under any of the parties named as grantors therein; and the defendants denied that by the communication set forth or otherwise, the committee did so claim or intend to claim.

THE PLEA set up as a bar, that her late majesty, Anne, then Queen of England, &c., being in the possession and occupation of all that parcel of land, then known by the name of the Duke's farm, King's farm, or Queen's farm, situate in the city of New York, referred to in the bill, of which the lands called the **Dominie's Bowery** are parcels, and being in the receipt of the rents and profits thereof, to her own sole and separate use and benefit, did by those certain letters patent, under the great seal of the then province of New York, bearing date the 23d day of November, in the year 1705, in the bill referred to, which letters patent, under seal, are in the possession of the defendants, give, grant, ratify and confirm, unto the defendants, The Rector, &c., by their then corporate name of "The Rector [644] and Inhabitants of the city of New York in communion of the Church of England, as by law established," and to their successors forever, among other lands therein described, all that parcel of land then known by the name of the Duke's farm, King's farm, or Queen's farm, together with the hereditaments and apurtenances thereunto belonging or appertaining, excepting and reserving all gold and silver mines; to be had and holden unto them and their successors forever; to be holden of her majesty, her heirs and successors, in free and common socage as of her manor of East Greenwich, in the county of Kent, in her kingdom of England; yielding and paying therefor yearly, unto her majesty, her heirs and successors, at the city of New York, to her collector and receiver general there for the time being, on the feast of the nativity of our blessed Savior, the yearly rent of three shillings of current money of New York, in lieu and stead of all other rents, services, dues, duties, and demands whatsoever.

That under and by virtue of those letters patent, and not otherwise, the defendants, by their then corporate name therein mentioned, did on the day of the date of the letters patent, enter in and upon, and become seised in their demesne as of fee, of the premises therein called the Queen's farm, including the premises in the bill designated by the name of Dominie's Bowery, claiming by force and virtue of those letters patent, and not otherwise, to be of right, sole and exclusive owners of the same and of every part thereof in fee simple, and as such owners to be of right entitled so to enter upon and become seised and possessed thereof as before stated; and further, that the defendants, by themselves under one or other of their corporate names in the bill mentioned, and those claiming under them, from the day of such their entry as before mentioned upon the parcel of land, so called the Queen's farm, continually down to the present time, have been in the uninterrupted, sole, exclusive

and actual seisin and possession of the premises called the Dominie's Bowery, in the bill mentioned, and every part and parcel thereof, claiming to have and hold the same as sole and exclusive owners thereof in fee simple, and during the whole of that time, have been in the sole and [645] exclusive receipt and enjoyment of the rents, issues, profits, avails, and proceeds thereof, and every part thereof, to their own sole and separate use and benefit, claiming to be of right entitled so to receive and enjoy the same, and without having paid over or accounted for to the complainant, or any or either of those persons under whom he by his bill, claims to derive title, for any part of such rents, &c.; and without having ever, at any time, or in any manner, held or possessed the last mentioned premises, or any part or parts thereof, or any estate, right, title, or interest therein, or any rents, &c., of or arising out of the same or any part thereof, or any share or interest therein, or any part thereof, in common and undivided with, or as trustee of the complainant, or of any other person or persons, under whom he by his bill claims to derive title, and without having ever acknowledged or admitted that their corporation was bound either in law or equity, to pay over or account for any part of such rents, &c., to the complainant, or any person under whom he so claims to derive title, and without having admitted or acknowledged by themselves, or by their agents or otherwise, that the complainant and those under whom he claims so to derive title, had any estate, share or interest, in common and undivided, or any other estate, share or interest, claim or demand whatsoever, in or to the last mentioned premises, or any part thereof, or in or to any rents, &c., of or arising out of the same.

After the plea was adjudged to be valid, the complainants in the revival suit filed the usual replication, taking issue upon the truth of the plea.

DEFENDANTS' TESTIMONY

The defendants, on their part, exhibited at the hearing the following proofs:

1. Original letters patent in fee, under the great seal of the province of New York, dated 23d November, 1705, from Anne, then Queen of Great Britain, France and Ireland, to the corporation therein styled, "The Rector and Inhabitants of the City of New York, in communion of the Church of England, as by law established," reciting their petition to Viscount Cornbury, for a grant [646] of all those several parcels of land, formerly called the Duke's Farm and the King's Farm, and then known by the name of the Queen's Farm, with all and singular, the fences, inclosures, improvements, &c., thereunto belonging, as the same were then in the occupation of, and enjoyed by George Ryerse, of the city of New York, yeoman, or by any former tenant, situate on the Island of Manhattan, in the city of New York, and bounded on the east, partly by the Broad Way, partly by the common, and partly by the swamp, and on the west by Hudson's river; and also the Queen's Garden, lying south of the church and cemetery; and then granting "of the Queen's special grace, certain knowledge and meer motion, all and singular the said farm," &c., under a yearly rent of three shillings. The patent is recorded in the Secretary's office, in Book of Patents No. 7, page 338, &c.

The complainants counsel objected to this evidence, because the letters patent did not appear to have been signed by Lord Cornbury, and only by George Clark, deputy secretary. The defendants also read the following indorsements thereon, of the receipt and payment of the quit rents reserved in the letters patent, as follows: March 12, 1738, December 21, 1750, and February 20, 1768, to the deputy receiver general, and September 20, 1786, to the treasurer of the state; in full at each period, and at the last date, the quit rents were commuted and paid and indorsed in full.

2. In order to prove a lease, dated 25th March, 1677, from Sir Edmund Andross, governor, &c., to Dirck Seckera of a certain parcel of land in the city of New York then called the *Duke's Bowery or Farm*, for a term of years the defendants read in evidence an exemplified copy of the judgment record, (signed March 22, and filed March 23, 1762,) in an action of ejectment, in favor of James Jackson, on the demise of Cornelius Brouwer and others, in which the church corporation was made defendants, and which was tried at the bar of the supreme court of the province of New York, on the 24th day of October, 1760, by a struck jury, and on a view; and a general verdict found for the defendants. The minutes of the trial were also produced, [647] by which it appeared that the original lease from Governor Andross to Dirck Secker, for thirty years, was then produced and read in evidence on the part of the defendants. The ejectment appeared to have been commenced in July, in the 31st year of George, 2d, by William Smith, as plaintiff's attorney. The demise was laid in 1757. The premises were described as being in the possession of Cornelius Vandenburgh, and as being sixty-three acres of arable land, sixty-three acres of pasture land, &c., (in the old form of courts in ejectment.) The complainant's counsel objected to the record, as being *res inter alias*, and as failing to identify the land; and to the minutes of the trial, as not being competent evidence of any fact or document.

3. The certificate of the secretary of state of the state of New York, was then produced and read, showing that the lease of Secker was not to be found in his office.

WILLIAM H. HARISON was then sworn as a witness in open court, and testified that he is the comptroller of Trinity Church, and has the custody of all the papers of that corporation. He has searched among all their papers for this lease with an anxious desire to find it, but it is not to be found.

4. Governor Dongan's charter to the city of New York, granted in 1686, was then produced, and section 16 was read in evidence, referring to the "Duke's Farm" as the land without the gate, called the "King's Farm." (Kent's City Charter, 23, 24.)

5. An exemplification of letters patent by Gov. Fletcher, in the name of the King, to Capt. John Evans, for a certain Swamp and Fresh Pond, called the "Fresh Water," described as "adjacent to our farm, commonly called and known by the name of the Duke's Farm," was next read in evidence; dated August 9, 1694, and recorded in Liber 6 of Patents, page 270.

6. An original lease, dated 19th August, 1697, by Gov. Fletcher, under the great seal of the Province in the name of the King, to the corporation of Trinity Church, by its then name, demising the premises as "our farm, called and known as the King's Farm, on the [648] island of Manhattan, and adjacent to the city of New York," by that general description, without specifying any metes or bounds, for the term of seven years, from the 1st day of August, 1698, at the annual rent of sixty bushels of wheat.

7. The defendants next read in evidence an act of the colonial assembly, passed May 12th, 1699, for "the breaking, vacating, and annulling several extravagant grants of land, made by Colonel Fletcher, the late governor of this

province, under his Majesty." Among such grants recited in the act, is that to John Evans, and the lands granted, are described as "adjacent to the King's Farm, formerly called the Duke's Farm, on the island of Manhattan;" and Governor Fletcher's lease to Trinity Church, in August, 1691, is also called "an extravagant grant of the King's Farm;" and by the third section, it is enacted, that it shall not be in the power of any future governor to grant for any longer than his own term in the government, the following lands, viz: Nutter's Island, the King's Farm, the King's Garden, or the Swamp and Fresh Water. (1 Van Schaak's Colonial Laws, 31.) The act declared the king to be reseised and repossessed of the premises of which the grants were so annulled.

8. The defendants then read in evidence an original lease dated May 9th, in the fourteenth year of the reign of William the Third, granted in his name by Lord Cornbury, governor, under the great seal of the province to the corporation of Trinity Church, by its then name of incorporation, describing it as "our farm, called and known as the King's Farm," without any specific boundaries or location; to continue from May 1st, 1700, during the time Lord Cornbury should continue governor of the province, at the annual rent of sixty bushels of wheat. This lease was objected to, because it was not signed by Lord Cornbury, and was not in accordance with the act of 1699. It was stated as matter of history, that Lord Cornbury was superseded as governor, in 1708.

9. The original counterpart of a lease, dated 24th January, 1704, from the corporation of Trinity Church, by its [649] then corporate name, to George Ryerss, or Ryerse, of the same land, called and described as the *Queen's Farm*, for five years, from 1st May, 1704, at the annual rent of £30 currency. Mr. Harison testified that he found this counterpart among the muniments of Trinity Church. It was objected to as furnishing no evidence of the execution of a lease to Ryerse.

10. The counterpart of a lease, dated July 20, 1721, from the corporation of Trinity Church to Robert Harrison, of the premises described as the *King's Farm*, for ten years; reciting that the land was lately demised to Francis Ryerse, and excepting six acres, leased to W. Lake, and the lots laid out and staked at the south end of the farm, and all timber, trees and bushes, &c. It was proved as before, that the counterpart came from the muniments of the corporation; and it was objected to on the same grounds.

11. Governor Montgomerie's charter to the city of New York, in 1730, was next produced, and section thirty-seven was read, which excepts in the grants then made to the city, "the lands called the King's Farm." (Kent's City Charter, 86.)

12. The counterpart of a lease, dated 1st May, 1732, from the corporation of Trinity Church, to Cornelius Cozine, of the same land, therein described as then called and known by the name of the *Church Farm*, for ten years, at an annual rent of £35. The exceptions are the same as in Harison's lease, also 30 feet for a ropewalk of Captain Degroche. The same proof and objections as before.

13. Exemplification of letters patent, granted by Governor Cosby to Anthony Rutgers, dated 28th September, 1732, for a certain swamp and fresh pond called the Fresh Water, adjacent to the farm formerly called the Duke's Farm, upon Manhattan, now New York island, containing about seventy acres.

14. Letters patent by Governor Cosby to the same, dated 31st December, 1733, (being a confirmation of the former,) for same land. Recorded in the secretary's office, January 2, 1733, in Book of Patents, begun June 8, 1731, fol. 131. Both of these patents were attested by the great seal, and the deputy-secretary's signature, and were not signed by the governor.

15. The counsel for the defendants again read [650] from the minutes of trial in the action of ejectment, in the suit of Jackson *ex dem.* Brouwer, against Trinity Church, tried as above mentioned, on the 24th of October, 1760, by which it appeared that there was proved on the part of Trinity Church, on that trial, an indictment, found in April term, 1746, against Jacob Brouwer and several others, for a forcible entry into the premises in question in that action, which indictment was produced in evidence on that trial.

16. The defendants next read in evidence, the original writ of restitution issued out of the supreme court, on the foregoing indictment, tested 4th August, 1747, signed by Richard Bradley, attorney-general; which writ recited the conviction of the defendants, on the 3d of August, 1746, of having, on the 3d of April, 1746, entered on the premises being the possession of Adam Vandenburgh, and the freehold of Trinity Church, and expelled V. and disseised the church, and that the defendants in the indictment had no estate or right in the premises within three years preceding, or at any prior time. The writ then commanded the sheriff to go to the close of the corporation of Trinity Church, situate in the west ward of the city, described as being the freehold of Trinity Church, in the possession of Adam Vandenburgh, and cause the same to be reseised, and the corporation to and in their full seisin thereof, and Adam Vandenburgh, their tenant, in his full possession thereof, to be put and restored. These documents were objected to, as incompetent and immaterial.

17. The defendants next produced and read in evidence, numerous counterparts of leases, made and granted by the corporation of Trinity Church to divers persons severally, of and for divers city lots, being parcels of the land called the Church Farm, the lots being therein severally described by their numbers, as known and distinguished on the map of the Church Farm; such leases commencing 28th February, 1750. These counterparts were in a folio book of original counterparts of leases, executed by the tenants of the corporation; which book Mr. Harison testified, was kept [651] among the muniments of the corporation. All the counterparts so produced, were objected to, as no proof of the leases, and as immaterial. Among these were fourteen leases in the year 1750, for various lots and parcels of land, generally situated on the southern part of the Church Farm, below Chambers street; one of which was a lease, dated 28th February, 1750, to Elias Degrushe, of the city of New York, ropemaker, for three lots, known as 415, 416 and 417, on the map of that part of the Church Farm, which lies to the southward of the Stockadoes, at the northwest corner of Warren street and Broadway, for twenty-one years, at the rent of seventeen pounds, the northerly lot, No. 417, described as extending west from Broadway, twelve hundred feet; lot No. 415, in length one hundred and twelve and a half feet, and lot No. 416, in length one hundred and thirteen feet three inches, each lot being in breadth twenty-five feet, and the three lots being bounded southerly, partly by a street on that map called Warren street, and partly by other lots on the map, not numbered, easterly by the Broad way, and northerly and westerly by other lots not numbered on the map.

Also a lease, dated 28th, February, 1750, to Willian Burnham, gardener, for a piece of ground situate in the out ward

of the city, at the north-west corner of the Church Farm, containing four acres, being bounded northerly by the land of Sir Peter Warren, easterly by land of Elias and Henry Brevoort, southerly by the church's land, and westerly by the North or Hudson's river, for twenty-one years, at the annual rent of eleven pounds.

Seven leases in the year 1751, for various lots, situate on Murray, Barclay, Church, and Vesey streets, and Broadway for twenty-one years.

18. Two ancient affidavits of Jacob Kooning, of the city of New York, carpenter, and Mary Layton, of the same place, widow, both sworn on the eighteenth day of May, 1751, before Frederic Philipse, (then one of the justices of the supreme court.) Mr. Harison testified that these papers were found among the muniments of the church. The handwriting of Judge Philipse, was proved at the hearing, by the testimony of ADOLPHUS N. GOUVERNEUR, his great- [652] great-grandson. He stated that Judge P. died in 1752.

Kooning deposed that he was born in the city of New York, and was eighty-one years of age, and he knew and remembered the tract of land then called the Church's Farm, or King's Farm, for seventy years then past; that sixty-five or seventy years previous, one Dirk Sicken, otherwise called Dirck Dey, lived in an old thatched house, which stood near the place where Adam Vandenburgh then lived, and that the fence fronting the highway and commons, from the south bounds of the Church's or King's Farm, to the Caleb Hook or Rutger's Land, always stood much upon the same line or course as it then stood. That after the death of Dirck Sicken, his widow possessed the Church Farm; and after her death, their son, Tunis Dey, possessed the same farm till the time of his death; and after his death, his widow married Joris Ryerse which he believes is between fifty-five and sixty years ago. The farm at that time was called the King's Farm. He often heard and always understood that Joris Ryerse hired the farm, first from the government, and afterwards from the English Church. That after Joris Ryerse left the farm, his brother Ryer Ryerse, lived on it, and after him, Francis Ryerse; and after him, one Harison; and then, one John Balen; and after John Balen, Cornelius Coezyne had the farm for some years, and then Adam Vandenburgh, the then present tenant; and that he had often heard, and always understood that all the aforenamed tenants after Joris Ryerse, held the farm as tenants to the English Church.

Mary Layton deposed that she was born in the city of New York, and was eighty-four years of age, and knew and remembered all the several facts stated by Kooning to be true.

To these affidavits the complainant objected, that they were not parties to them; the same were *ex parte*, and no occasion for their being made is shown.

19. A counterpart of a lease to Adam Vandenburgh, was then read in evidence, dated the fifth of March, 1752, by which the corporation of Trinity Church demised to him, for five years from March 25th, all that part of the [653] Church Farm situate in the west and outwards of the city of New York, which lies to the northward of the Stockadoes, excepting thereout so much as by the corporation might be thought convenient for the building and use of a college, and also the four acres which was leased to Burnham; and also all trees and timber standing and growing thereon, at the annual rent of thirty pounds. The lessee covenanted to surrender the premises to the lessors at the end of the term, with 1,190 panels of good fence thereon, and that the church might at any time within the term, lease to any persons, any of the ground demised, which was near or adjoining Burnham's garden, or any lots fronting the Broadway, to the northward of the Stockadoes, the church abating to the lessee, of his rent, ten shillings a year for every acre of ground they should so lease.

20. Next, eighteen other leases by the church, in the year 1752, for various lots of the Church Farm. Among these leases, was one dated 19th August, 1752, to Arthur Wilkinson, gardener, for a parcel of ground, described as being in the west ward of the city, being part of the Church's Farm which lies to the southward of the Stockadoes, containing, in breadth, front and rear, fifty feet, and in length, on each side, six hundred feet, being bounded easterly by the Broad Way, southerly by the ropewalk of Degrushe, westerly and northerly by other parts of the Church's Farm, to the southward of and adjoining to the Stockadoes, at the yearly rent of twelve pounds, for twenty-one years from the 25th of March then next ensuing.

21. Two leases by the church in the year 1753, for lots in the southern part of the Church Farm, each for twenty-one years.

22. An ancient engraved map of the city, exhibiting New York in 1695. (For a description of this and the following reference is made to the opinion of the court, under the first point of the third general head.

23. Francis Maerschalck's map of the city of New York, published in 1755. The defendants also produced, as a part of their evidence, a map of the Church Farm, as laid out into blocks and city lots.

Smith's History of New York, London edition of 1757, was also produced as evidence.

24. One lease by the church, in the year 1756 for [654] twenty-one years, for two lots on Robinson street.

25. Twenty leases by the church, in the year 1757, for sundry lots in the southern part of the Church Farm, generally for twenty-one years each. (Where *lots* are spoken of, city or building lots of 25 by 100 are feet intended.

26. Seventy-nine leases by the church, in the year 1758, for sundry lots in the southern part of the Church Farm, to the southward of the Stockadoes, generally for twenty-one years each.

27. A lease by the church to Cornelia Rutgers and Leonard Lispenard, dated 25th March, 1758, of Lot No. 1 of the Church Farm, for twenty-one years, was read from its recital at large in the next lease to Leonard Lispenard.

28. An original indenture of lease, and the original counterpart, by and between the corporation of Trinity Church and Leonard Lispenard, dated 30th April, 1764. This recites the lease of 26th March, 1758, before mentioned, of lot number one of the Church Farm, containing seventy-seven acres, three roods, and thirty-two perches, (excepting three acres and twenty-three perches adjoining to the Broad Way and the Palisades, for twenty-one years, at the yearly rent of twenty-five pounds. It also recites the death of Cornelia Rutgers, and an agreement between L. Lispenard and the church, that in consideration of his transferring and making over to them so much of the lot No. one, in one entire spot to be pitched on by the church, as would make two hundred lots of twenty-five by one hundred feet, they would demise to Lispenard eight acres of the lot No. one, for eighty-three years, from the expiration of the first lease, at an annual rent of £66 for the first forty-five years, and £93 6s. 8d. for the remaining thirty-eight years; and that in pursuance of this agreement, the church had made their election, and had caused the same to be laid out in lots by Francis Marschalck, one of the city surveyors, as by the

draft of the plan annexed appeared; in consideration whereof the church demised to Lispenard a lot containing eight acres of land, (part of that demised by the former lease,) for eight-three years, from the 25th of March, 1779, at the rents above specified. Such lot beginning at a stake [655] near the southwest end of the dam or causeway, running across Mr. Rutger's meadow, and which now makes part of the new road running through the Church Farm, leading to Greenwich; thence south, (bounding it by courses and distances. See Gerring's testimony, next page.) By the same instrument, Lispenard surrendered to the church, 1st. A piece of land being part of the lot No. one, beginning on the northwest side of Church street, in front of lot No. 456, and runs thence through that lot according to a pricked line description of the course of the Stockadoes, (and which ran through the block between Warren and Chamber streets,) to the northwest corner of lot No. 489, being a point on the south line of Chambers street, one hundred feet west from Chapel street. 2d. Another piece of land, being the other part of the lot No. one as laid out and divided into streets and lots on the map referred to, from lot No. 572 to lot No. 760, containing in the whole, exclusive of the streets, as much ground as would make two hundred lots, each twenty-five feet in breadth and one hundred feet in length; the two pieces being taken together being bounded southerly by the line where the Stockadoes lately stood, westerly by high water mark in Hudson river; northerly, partly by the Church farm and party by Rutger's meadow, and easterly by Church street.

29. An original indenture of lease and counterpart, by Trinity Church to Leonard Lispenard, dated 5th May, 1768, which recites the lease of 25th March, 1758, also the lease and surrender of 30th April, 1764, and then recites a further agreement by which Lispenard was to surrender another piece of the church land, lying to the southward of his house, to accommodate John Keating with a place for his paper mill. And also all the land held under the first recited lease, lying west of the new road to Greenwich; the church agreeing on their part to demise to Lispenard another piece of land adjoining his eight acre lot, for twenty-two years beyond the term of his then present lease of No. one, and to permit him to remove the improvements, except fences, erected by him on the eight acre lot. That in pursuance of this agreement the church, by this last instrument, demised to Lispenard a lot of 9 acres and 35 rods on the east side of the new Greenwich road, adjoining the eight [656] acre lot, bounded on the south by a line running from Rutger's meadow, to a point on the Greenwich road distant 2 chains and 44 links southwardly from the south line of the eight acre lot, for the term of 22 years from 25th March, 1779, at the annual rent of a peppercorn. And in pursuance of the same agreement, Lispenard thereby surrenders to the church a lot described as lying on the west side of the new Greenwich road, between it and Rutger's meadow, containing 11 acres 1 rood and 9 perches. And also all the land lying on the west side of the same road, which he had a right to, or was then possessed of, under the first recited lease.

The lot of nine acres and 35 rods, for which the extended term was granted, also the surrendered lot of 11 acres 1 rood and 9 perches; and also the eight acre lot, are laid down on a map annexed to this lease. On this map, the surrendered lot of 11 acres 1 rood and 9 perches is represented to be on the east side of the Greenwich road, and to extend eastwardly to Rutger's meadow.

30. Deposition of William B. Gerring, in this cause, taken June 6th, 1842, who proved that these original leases were in the custody of and came from among the muniments of the descendants of Leonard Lispenard, each being under the seal of the church. That the counterparts thereof on parchment, then produced by defendants, purporting to be executed by Leonard Lispenard, were counterparts of the same original leases having been compared by deponent and that the name Leonard Lispenard, subscribed thereto, is his proper handwriting, with which deponent is well acquainted. That the land called the eight acre lease, according to the present plan of the city of New York, is bounded on the west by Greenwich street, between Watts street and a point in the block between Laight and Vestry street, and on the east by a line commencing near to Laight street, between Hudson and Varick streets, and terminating in Watts street, which land was always held by the Lispenard family and their assignees; and so far as it remains unsold and unassigned to others, is now held by Robert Stewart, (who derived from the Lispenard's) under the in- [657] denture of 1764, and that the rent thereof has been regularly paid by the claimants under the lease, to the church, the defendants in this cause.

Mr. Harison proved the seals to the original leases to Lispenard, to be the corporate seal of Trinity Church. Each appeared to be signed by two church wardens. The complainants objected to these leases, as not being sufficiently proved; no authority for their execution being shown, and it can only be shown by a vote of the corporation in their minutes.

31. The defendants next read in evidence the counterparts of twenty-seven leases by the church, in the year 1759, for a large number of lots, in Warren and other streets, generally for 21 years each. Among these is a lease dated 1st February, 1759, to John Marshall, for a piece of land described as in the west ward, commonly known by the name of the *Old Bowling Green* in the Church Farm, as it was then in a hedge fence, being 130 feet in breadth by 223 in length, except a part leased to Elias Degrushe, and forming part of his ropewalk. Also another piece of ground, part of the Church Farm, lying north and east of the Old Bowling Green, between the ropewalk and the palisadoes, being in length from the northwest corner of the Bowling Green to the eastern most block house on the Church Farm, containing about four-fifths of an acre of land. The lease was for 21 years from 25th March then next, at the annual rent of £20.

32. Seventeen leases by the church, in the year 1760, for a large number of lots in Warren, Murray, and other streets, generally for 21 years each.

33. Twenty-three leases by the church, in the year 1761, for a large number of lots on Broadway, between Reade and Duane, and between Reade and Chambers streets, and in Chambers, Reade and other streets, on the Church Farm, generally for 21 years each. Among these is a lease to Samuel Sackett, dated the 28th of February, 1761, for two lots described as Nos. 529 and 530, on the southwest corner of Broadway and Reade streets for 21 years, from the 26th of March then next, at a yearly rent of six pounds. (It appeared these lots, 529 and 530, were leased 12th [658] June, 1782, to Cristopher Smith, for 14 years. Also a lease to Jacob Demarre, dated 28th February, 1761, for two lots, Nos. 421 and 422, on the south corner of Broadway and Chambers street for 21 years. Also a lease to David Morris, of same date and for same term, of two lots, Nos. 525 and 526, on the northwesterly corner of Broadway and Chambers streets. (It afterwards appeared that lot 525, the corner lot, was leased to D. Morris, 19th November, 1789,

for 21 years; and lot 526 was leased to Philip Jacobs, 1st April, 1794, for 17 years.)

34. Eleven leases by the church in the year 1762, for sundry lots of land, in Reade, Chambers, and other streets, generally for 21 years each. Among these is a lease by the church to Abraham Cole, dated 28th February, 1762, for 21 years, for a lot described as distinguished on a map of that part of the Church Farm, which lies to the southward of Rutger's farm, by lot 560, bounded southerly in front by Reade street, westerly by lot 561, northerly by Rutger's farm aforesaid, easterly by the rear of lots 557, 558 and 559, containing in breadth 25 feet, and in length from Reade street to the farm of Anthony Rutgers; another lease, of the same date, to Andrew Sommers, for 21 years, for two lots on the north side of Reade street, described as known on the map as Nos. 564 and 565, and bounded by Rutger's farm, as described in the last mentioned lease. Another lease of the same date, for 21 years, to Martin Farrell, for lot 563 on the map, lying partly on the south and partly on the north side of the Stockadoes, bounded southerly in front by Reade street, easterly by lot 562, northerly by Rutger's farm, and westerly by lot 564. Another lease of the same date to Tunis Quackenbos, for 21 years, for a lot described as known on a map of that part of the Church Farm, which lies partly to the southward and partly to the northward of the Stockadoes, by lot No. 426, bounded northerly by Chambers street, easterly by lot 425, southerly by the Stockadoes, and westwardly by lot 427, containing in breadth 25 feet, and in length from Chambers street to the Stockadoes, as they then stood. Another lease of same date, to John Convis, for lot 561, on the same map, on the north side of Reade street, and otherwise bounded northerly by Rutger's farm, &c., as in the above lease to Abraham Cole.

[659] 35. The defendants again referred to the exemplified copy of the record of judgment in the supreme court, in the action of ejectment, as the suit of Jackson *ex dem.* Brouwer against Trinity Church before mentioned. It appeared that William Smith was the attorney for the plaintiff, and James Duane for the defendants. The premises described in the declaration, were one dwelling house, one barn, one orchard, one garden and sixty-three acres of land, situate at the westward of the city of New York, and then or late in the tenure or occupation of Cornelius Vandenburgh or his assigns.

36. Next they produced and read an exemplified copy of a judgment record, filed the 7th January, 1752, in the supreme court of New York, in an action of ejectment commenced in 1749, by James Jackson *ex dem.* Cornelius Rrouwer and others, against Trinity Church, in which, after being at issue two years, judgment was entered for the defendants as in case of a non-suit. The tenant described as in possession, was Adam Vandenburgh, and the land was described in the declaration, as a farm of sixty-three acres. William Smith was plaintiff's attorney in the suit.

37. Four leases by the church, in the year 1763, for sundry lots of land on Warren, Reade, and on the corner of Warren and Chapel streets. Among these, is a lease dated 28th February, 1763, to Jean Quecurie, for three lots on the north side of Reade street, described as known on a map of that part of the church farm to the southward of Rutger's farm, by lots 566, 567 and 568, bounded easterly by lot 565, northerly by Rutger's farm, and westerly by lot 569, extending from Reade street to Rutger's farm, for twenty-one years, at the annual rent of £3 15s.

38. Three leases by the church, in the year 1764, for sundry lots of land on Broadway and Reade streets. Among these is a lease dated 28th February, 1764, to Philip Spies, for a lot of land, described as situate in the west ward, and known on the map by the number 559, and bounded easterly in front by Broadway, northerly by Rutger's farm, westerly by lot 560, and southerly by lot 558, for eighteen years from the 25th of March then next, at the yearly rent of £3.

39. A lease by the church to John Jones, dated
[660] February 28, 1765, for two lots on Broadway, corner of Warren street, for sixty-three years.

40. A lease by the church to John and Oliver Mildeberger, dated February 28th, 1766, for three lots on the south side of Reade street, for sixty-three years, and the like to Martin Farrell, for one lot on same street.

41. A lease by the church, dated February 28th, 1766, to John Whipple, for eight lots on Greenwich street, between two streets not named, (but which are now known as Duane and Harrison streets,) for ninety-nine years.

42. A lease by the church to George Harrison, dated 30th October, 1765, for twenty-four lots of land, between Greenwich street and the river, and between two streets not named (which were afterward called Harrison and Jay streets,) for the term of ninety-nine years.

43. A lease by the church to Gilbert Forbes, dated 28th February, 1767, for two lots on Greenwich street, (lying between two streets now known as North Moore and Beach streets,) for ninety-nine years.

44. Lieut. Ratzen's "Plan of the City of New York," made from a survey in 1767, was here introduced in evidence. (It is referred to in the opinion of the court, in connection with the other maps.)

45. A large number of counterparts of leases by Trinity Church to different persons, were then read in evidence, commencing in the year 1768, and continuing in successive years to the 14th of April, in the year 1831. The number of these leases was *six hundred and twenty*, and they were granted to divers persons, severally, for divers lots, being parcels of the land called the Church Farm, generally for terms of twenty-one years each; the lands demised were nearly all situated on divers streets on the Church Farm, north of and including Warren street and extending north to, and including Christopher street. The number of such leases in the respective years was as follows, namely: [661]

Leases in	1768, Two.	Leases in	1804, Twenty-two.
"	1769, Four.	"	1805, Fifteen.
"	1771, Five.	"	1806, Three.
"	1772, Two.	"	1807, One.
"	1773, Three.	"	1808, One.
"	1774, One.	"	1809, Seventeen.
"	1779, Four.	"	1810, Twelve.
"	1780, Three.	"	1811, Sixteen.
"	1781, Seven.	"	1812, Eight.
"	1782, Ten.	"	1813, Seventeen.
"	1783, Six.	"	1814, Eighteen.
"	1784, Two.	"	1815, Fourteen.
"	1785, Two.	"	1816, Twenty.
"	1786, Five.	"	1817, Seven.
"	1787, Eight.	"	1818, Fourteen.
"	1788, Seven.	"	1819, Seven.
"	1789, Two.	"	1820, Four.
"	1790, Eight.	"	1821, Nine.
"	1792, Nineteen.	"	1822, Eight.
"	1793, Twenty-two.	"	1823, Twenty.
"	1794, Twenty-two.	"	1824, Forty-six.
"	1795, Eight.	"	1825, Forty-five.

"	1796, Five.	"	1826, Twenty-seven.
"	1797, One.		
"	1798, Two.	"	1827, Twenty.
"	1800, Two.	"	1828, Twelve.
"	1801, Eight.	"	1829, Four.
"	1802, Five.	"	1830, Seventeen.
"	1803, Fourteen.	"	1831, Sixteen.

Among these leases, are a lease to *John Keating*, for sixty-three years, dated 5th May, 1768, for a parcel of land of more than two and one half acres, being thirty-four lots, lying between Provost, Franklin, and Moore (North Moore) streets, and extending from Greenwich street, eastwardly to Rutger's land.

Also a lease to Samuel Francis, for sixty-three years, dated 25th March, 1769, of a part of the church farm, therein described as bounded on Greenwich road, Chambers street, Chapel street, and Warren street.

[662] Also, a counterpart of a lease to Aaron Burr, dated May 1, 1797, for sixty-nine years, of a part of the church farm, containing twenty-six acres, three roods and thirty-six perches of land, lying between Spring and Hamersley street, and bounded by Greenwich street on the west, and a line four hundred and fifty feet eastwardly from Hudson street on the east; (excepting the block between Vandam, Charlton, Greenwich and Hudson streets.)

Also a counterpart of a conveyance in fee, dated July 1, 1789, to Abraham Wilson, of the land described in the above mentioned lease to Samuel Francis, reserving an annual rent in fee of £30; the lease to Francis being then surrendered.

46. The defendants next produced and read in evidence, (the complainants counsel objecting to the evidence,) from the files of the supreme court, the minutes of trial, pleadings, and prior proceedings, in an action of ejectment, in favor of James Jackson, *ex dem.* Richard M. Malcom and others, against Martin Bromeling, which was tried before Mr. Justice Tompkins on the 22nd April, 1807, and a verdict found for the defendants. The premises claimed were situated in the Fifth Ward of the city of New York. Also, the rule for judgment, entered on filing the *nisi prius* roll, minutes and postea.

47. The defendants also read in evidence the record of several conveyances in fee, made and granted by Trinity Church, to divers persons severally, of and for divers lots, being parcels of the land called the *"Church Farm."* The books containing such records were brought into court and produced by the register of the city and county of New York, pursuant to an order of the court. The number of conveyances so read was *three hundred and eighty-five;* commencing in the year 1784, and ending in the year 1830, and they appeared to have been recorded at the request of the grantees therein. The lots conveyed were situated on various streets, in all parts of the Church Farm, between Fulton street on the south and Christopher street on the north, Broadway on the east, and the Hudson river on the west.

Among these are the following: One to John Mills, in the year 1778, for four lots, Nos. 582, 583 [663] 584 and 585, on Reade street. One to William Alexander, in the year 1788, for lot 530, on the southwest corner of Great George's street, or Broadway and Reade streets, one to James Ryker, in the year 1789, for two lots, Nos. 667 and 668, on Reade street, northwest corner of Chapel street; one to Edward Livingston in the year 1796, for four hundred and seventy-five feet on the west side of Greenwich street, near Spring street, to Hudson river; one in the year 1802, to St. Mark's church, for thirty lots on Warren, Reade, Harrison, North Moore and Franklin streets; one to Wm. and F. C. Havemyer, in the year 1809, for two lots on Vandam street, bounded easterly by land leased to Aaron Burr; one to the city corporation, in the year 1813, being a cession of sundry streets between Christopher, Washington, Hudson and North Moore streets; one to Henry Cary, in the year 1821, for two lots 552 and 535, on Chambers and Reade street.

The defendants also produced and read in evidence, a deed from Trinity Church by its then corporate name, to Kings, now Columbia College, by the name of "The Governors of the College of the Province of New York, in the city of New York, in America," dated the 15th day of May, in the 28th year of George the Second, (Anno Dom. 1755,) and conveying in fee simple all the lands lying between Barclay and Murray streets, from Church street to the North river, and the use of the street called Robinson street, ninety feet wide from Broadway to Church street; the consideration expressed, being for the promotion of learning, and the nominal sum of ten shillings.

48. The depositions of the following witnesses, taken in this cause on the part of defendants, were then read, viz.: Morgan Lewis, James Ryker, James Bleeker, Peter Lorillard, Peter Embury, Lewis C. Hamersley, Adolphus Loss, Ezra Weeks, James Barrow, William Johnson, Samuel Gilford, Benjamin M. Brown and William H. Harrison. The following is a synopsis of their testimony:

MORGAN LEWIS testified, November 29th, 1842, that he was in the 89th year of his age, was born in the [664] city of New York, and resided there before and at the commencement of the Revolutionary war, and after its termination.* For several years after the peace of 1783, he pursued the profession of the law, and that he and Aaron Burr were, in 1784, applied to as counsel, by a committee of Trinity Church, for advice concerning certain attempts then made and making by individuals of the Bogardus family, to get into possession of a part of the land in the occupation of the church, and of which the church claimed to be the owners. That they united in advising that all fences, and other marks of possession, erected on the church land, by Bogardus and his associates, should be removed by force, if necessary, which advice was pursued by the vestry, so that the possession of the church was maintained against all such attempts.

That his father, Francis Lewis, was for several years after the peace of 1783, a vestryman of Trinity Church, and he also belonged to the same church some few years after the peace. That he was concerned, with others, in the purchase of a large piece of land belonging to the Rutger's estate, on which he afterwards erected the house on Leonard street in which he resides. This purchase adjoined the church land, and the line between the two estates was afterwards straightened by agreement, in accommodation to the lines of the new street. Under the circumstances above stated, he became acquainted generally with the land called the Church Farm. That it was commonly understood and reputed to commence at or near St. Paul's Church, and to extend northerly along Broadway to near the Hospital, and thence along the Rutger's estate and the estates of Bayard and Herring, passing through the meadow land there, and to be bounded on the west by the Hudson river; he cannot specify the northern boundary, but it was always reputed and understood to include Lispenard's place, Brannan's Garden, Mortimer's place, afterwards Col. Burr's, and now

*This witness was a Justice of the Supreme Court of the state of New York, from 1792 till 1804, including two years in which he was Chief Justice and in 1804 he was elected Governor of the state.

said to be possessed by John Jacob Astor, and Williamson's nursery; which several estates he always understood were leased by the church for long terms [665] prior to the Revolution. That the land called the Church Farm has from his earliest recollection, been in the exclusive possession and enjoyment of the church and of purchasers under them. He has never known or heard of any interruption of such possession, nor of any attempt to interrupt it, except by occasional acts of intrusion or violence by the Bogardus heirs, soon after the peace of 1783. That he never at any time understood or heard that any of the Bogardus heirs claimed or pretended to be tenants in common with the church, of any part of the church estate, or to be entitled in common with it to any part of the rents, profits or proceeds thereof; but on the contrary, he distinctly understood that the design and object of the heirs in entering on the estate, was to establish an actual possession in parts thereof, under title wholly adverse to that of the church.

The deponent proved two original papers signed by him and Aaron Burr, in their handwriting, containing the advice above referred to by him.

On his *cross examination*, Gov. Lewis testified that he had heard of the King's Farm, but not of the Duke's Farm, nor of the Queen's Farm, nor of the Dutch West India Company Farm, and knew nothing of the boundaries of either.

JAMES RYKER testified, (January 6, 1842,) that he was in the eightieth year of his age, and resides in the city of New York. That he removed to the city soon after the peace of 1783, and a short time afterwards married a daughter of John Zimmerman, who then held three lots of land on Warren street, and two lots on the corner of Reade and Chapel streets, in the now fifth ward of the city. That Zimmerman built a house on one of the lots on Warren street, and lived in it when deponent married; all those lots were held under leases from the corporation of Trinity Church; the lease for those on Warren street was given prior to the revolutionary war, and the lease of the other two lots was given in February, 1783. That soon after the peace of 1783, Zimmerman let out the two lots on the corner of Reade and Chapel streets, to one Davenport, who, after holding possession for a short time, refused to pay the rent, on the ground [666] that John Bogardus claimed to be owner of the lots, and had notified him not to pay the rent to Mr. Zimmerman. Davenport, soon after this refusal, moved away, and one of Bogardus's sons took the possession from him. A representation of those proceedings was made to the vestry of Trinity Church, and they turned out Bogardus and restored the possession to Zimmerman, who then, (about the year 1786,) put deponent into possession of the same lots, and his possession was not afterwards disturbed. He lived on the lots as a tenant of the church, about two or three years, and then purchased the fee and received a conveyance from the church, under which he has ever since held both lots, except the parts taken for widening streets. During all this time he has been well acquainted with that part of the city which was universally considered and understood to belong to Trinity Church. He does not know the bounds of the church estate, but all the land between Broadway and the North river, and between Partition street to and beyond Duane street, as also the land occupied by Mr. Lispenard, and that called Barnnan's garden, and the land called Burr's lease, and that called Williamson's nursery, and so up to Christopher street, has always, within the time of his knowledge of the city, been reported and considered to be church property. It was called the Church farm. At the conclusion of the war of the Revolution, there were but few houses on Chambers, Reade or Duane streets. Warren street was more built up, and at the lower corner of that street on the north side was the place called Vauxhall, on which there was afterwards a pottery. On and after the peace of 1783, the church leased out and sold a great many lots on the above mentioned streets, and on other parts of their property, and have ever since continued to lease and sell the same. Since deponent's first knowledge of the city, all the land on the above mentioned streets lying between Broadway and the river, and also lying north of Duane street, along the river, including Greenwich street, and Hudson and Varick streets, and the cross streets between them and the river, has been held, so far as he has always heard and understood, under the corporation of Trinity Church. He does not know of any land within the limits of the Church farm, and more especially of that part which consists of the land on [667] Warren, Chambers, Reade and Duane streets, (with which he had been well acquainted for the last fifty-five years,) that has been or is possessed under any title save that of Trinity Church, except some short temporary possession taken by John Bogardus, or some of that family, about the year 1784 or 1785, by putting up a fence on a piece of vacant ground just north of Duane street on the Greenwich road, which was immedaitely or soon after taken down and burnt by the church party. Deponent saw the fence after it was put up, and the remains of the burnt rails. The church kept possession of this property, which they have since leased out or sold. He has also some recollection of the church having taken down a fence which had been put up further to the north, and next to Lispenard's land, which was occupied by one Higby. That one Captain Lewis was collector of church rents after the peace, and he was succeeded by old Mr. Barrow; he paid rent to the first, but does not recollect whether he paid any to Mr. Barrow, or not. The lease now produced, is the counterpart of the lease from the church to Mr. Zimmerman, and the conveyance now produced is the conveyance of the church to him, above referred to. (The deed was recorded in liber 121, of Conveyances, page 414; and the lease was dated 28th July, 1783, for lots No. 667 and 668 of the Church farm.)

On cross-examination Mr. Ryker testified, on being shown a map printed in 1767, he says when he came to New York in 1783, he does not recollect of any more enclosures or buildings on the land lying north of Warren street as far as the map extends, and east of the North river towards and including the meadows thereon represented, than what he saw here, (pointing to the map) except a few on Duane street and on Reade street, and a few on Chambers street. Warren street was pretty well built up, and all the streets south of it. The yellow wooden house on the south corner of Chambers street and Broadway, was occupied when he first came to New York by one Anderson. Deponent's father-in-law put up the houses on 667 and 668, occupied by him. He remembers Mrs. Anderson held two lots in Chambers street which she refused to give up, and the church gave her some trifle of money and she went off; and Mrs. [668] Broad, who lived in the fort near the foot of Harrison street, who refused to give up and remained there till the church bought her out, as he understood. The church gave her some trifle out of charity; so he understood at the time. This was soon after deponent got possession.

JAMES BLEECKER, testified (in May and June, 1842,) that he was in the seventy-eighth year of his age, and has always (except during the revolutionary war,) resided in the city of New York. His father, Anthony L. Bleecker, resided dur-

ing the war, in New Jersey, and returned to the city of New York in the year 1783, when he re-commenced business as auctioneer, and continued at that business separately, and in partnership with deponent many years. And deponent, with various partners, has carried on the same business, from the time he commenced, until now. Deponent was a clerk in the service of his father in New York, until he became a partner, as above stated. Soon after the peace, and as early as 1784, the vestry of Trinity Church resumed the management of the church estate and made sales and leases thereof in lots or parcels. This business was conducted principally by a committee of the vestry, called the committee of leases; but other sales were made by public auction under the directions of the vestry. These public sales were commenced in the year 1784, and were continued from time to time until the year 1825, and were all made by deponent's father, or by some or one of the firms of which deponent was a member. The witness produced a list or inventory of the lots so sold at auction, showing the numbers and situations of the lots, the dates of the sales, and the names of the purchasers, which list was made out by deponent, several years ago, from the original books of account of his father, and of deponent's several firms, then in his possession. That he was a member of the vestry of Trinity Church, from 1814 until the present year, and thereby and by means of his agency in those sales, became and for a long course of years had been acquainted with its real estate. That the property of the corporation called the Church Farm, as he always understood, and as has been generally understood and reputed, extended on the west side from the street called Partition street along the North river to the [669] street now called Christopher street, and on the east from Partition street along that part of Broadway formerly called Great George street, to a point between Reade street and a street formerly called Barley, now Duane street; the eastern boundary line then left Broadway, and crossing Duane street at some distance to the west of Broadway, ran along the estates of Rutgers, Bayard, and Herring, to Christopher street, embracing the estates severally called Lispenards, Brannan's lease, and Mortier's, afterwards Burr's, now Astor lease; also Williamson's nursery, and a piece of land on the opposite side of the Greenwich road, bounded on Christopher street and the North river, formerly possessed by the late General Morton; which estates were granted by the church prior to the Revolution, on long leases. Of these estates, that leased to Mortier, now called Astor's lease, and also a part of the land occupied by Lispenard, called the Eight Acre lease, are still held by or under such leases, but all the others have reverted to Trinity Church, by the expiration or surrender of the terms, and for several years past have from time to time been laid out in city lots, and sold or leased in common with other parts of the church farm. That ever since deponent's return to the city of New York, in the year 1783, Trinity Church has, according to his best knowledge and belief, been in the sole and uninterrupted possession of the land above described, called the Church farm, (except the part sold by them;) and in the sole and exclusive receipt and enjoyment of the rents and profits thereof, as sole owners of the land. That such rents and profits, and also all the proceeds of all the sales of lots within the Church farm, were from time to time appropriated by it, to its own use and benefit, or otherwise disposed of at the pleasure of the vestry, and that neither whilst he was a member of the vestry, or at any other time, has he ever heard it alleged or pretended, or in any manner admitted that any part of the church property was held by the church in common with the Bogardus family or any of them, or that any of that family, or any other person or persons whomsoever, had or claimed to have any estate or interest in that property, or any part thereof, or in the rents, profits, [670] proceeds or avails thereof, in common with the church. But he recollects to have heard, soon after the peace of 1783, that a claim to a part of the church farm had been set up by some of the Bogardus family, in opposition to the title of the church, and many years afterwards he also heard of a lawsuit commenced under that claim by Gen. Malcom or his heirs, to recover possession of some lots situated within the Church Farm, and held by a tenant of the church; which suit was decided in favor of the church. With these exceptions, deponent has never heard the title disputed or called in question, until at or about the commencement of this suit.

On cross-examination, Mr. Bleecker testified, that Partition street was so called because it was the division line between the church and some others not remembered. The committee of leases did not keep a record of leases as he understood or knew of. The original accounts from which the list of sales was drawn, contained the prices for which the lots were sold respectively. The books of the firms referred to, are now stored away in a house, No. 36 Hudson street, with other like books. He cannot say how he came to know the boundaries he mentions, whether by plan, map, or verbal representation of others. He never heard of any persons being in possession of any part of the land described by him as the Church Farm, who were not tenants of the church, or purchasers under them.

The schedule, or list of auction sales referred to in the examination of Mr. Bleecker, shows sales as follows:

In the year	1784,	21	lots.	In the year	1804,	31	lots.
"	1787,	56	"	"	1805,	47	"
"	1788,	53	"	"	1806,	20	"
"	1789,	2	"	"	1807,	29	"
"	1795,	53	"	"	1809,	16	"
"	1797,	35	"	"	1810,	8	"
"	1798,	2	"	"	1811,	18	"
"	1800,	3	"	"	1812,	3	"
"	1801,	14	"	"	1813,	29	"
"	1802,	9	"	"	1814,	2	"
"	1803,	20	"	"	1815,	4	"
"	1816,	1	"	"	1823,	5	[671]
"	1818,	9	"	"	1825,	1	"

Total 491 lots, sold at auction by Trinity Church, from 1784 to 1825, inclusive.

PETER LORILLARD testified, (January 4, 1842,) that he was in the seventy-seventh year of his age, and has always, except three years of his early childhood, resided in the city of New York. That prior to the Revolutionary war, he resided with his father in Chatham street, near Chambers street, and continued to reside there until about ten years ago. That his grandfather, as far back as he can recollect, which is more than seventy years, lived in a house on Broadway, between Barclay and Robinson streets. His uncle lived in Park Place. One Wolf and Marselis then occupied lots on Broadway between Barclay and Robinson streets. That during and at the close of the war, one Sutton kept a shop on the north corner of Robinson street and Broadway. That one Bramman had a ball alley and lived in the same block. That one De la Montagnie lived on Broadway, next to the corner of Murray street, where he had several lots and kept a public garden. That at the peace of 1783, one Spice lived on Broadway, between Reade and Duane streets; and be-

sides these, he recollects several other possessions on Reade street. All which several possessions, as he understood at the several times thereof, were held under Trinity Church, and were part of the church estate. That he knew most if not all the occupants, at the periods above stated, of houses and lots on that part of Broadway, but has no recollection that either of them, before, or during, or after the close of the war, was occupied by any of the name of Bogardus. That in 1783, there were very few houses on Warren, Chambers, Reads, or Duane streets. One Francis kept the place called Vauxhall, at the corner of Greenwich road and Warren street. That since the Revolutionary war he has been more particularly acquainted with that part of the city, and he has always understood and believes the lands lying on Warren, Chambers, and Reade streets and a part of Duane street, were church property, and that the church [672] ever since that period have been in the exclusive possession of the same, except the lots they sold or conveyed to others. That from the time of his first knowledge of the estate of the church, it has, as he has always understood and believes, been in the uninterrupted possession of the corporation of Trinity Church, and of their tenants and purchasers under them, except that some years prior to the war, he understood that a suit had been commenced against the church by persons claiming under the Bogardus title, which was decided in favor of the church; and about two years after the peace of 1783, he understood one Bogardus had gone by night, with a party of men, and had entered and taken possession of some land of the church, of which he was immediately dispossessed. This land was at the time pointed out to deponent as lying between Chambers and Reade streets, and between Church and Chapel street; and he heard that Bogardus afterwards commenced a suit against the church and was cast. He knows of no possession of any land, or any part of the church estate, which has ever been held or possessed by any person or persons claiming title thereto in opposition to the title of Trinity Church, except the temporary possession above referred to.

On cross-examination, Mr. Lorillard testified that he has heard his father and grandfather and uncle say they held under the church. The house on Broadway, on the south corner of Chambers street, was a yellowish two story wooden house; one Marselis lived there before the peace; he died about the time of the peace. He remembers a report, about 1785 or 1786 that Mr. Bogardus had gone with about twenty men and took possession of some ground, and the church went the next day, or close by, and knocked down the fences which Bogardus had put up. People were surprised that Bogardus had taken possession, as he had a law suit about it before the Revolution, and got beat. The ground he took was all bare at the time. There were no fences thereon; it was all vacant land north of Chambers street, below Chapel street, except a few houses here and there. There was Dean's distillery on the west side of Greenwich street and Murray street; there was Vauxhall on the corner of Warren and Greenwich streets; Curtenius's furnace, on the west side above Reade street; there was Lispenard's brewery, on the east side of Greenwich road, [673] south of Canal street. On the borders of the meadow, east of the brewery, was Lispenard's house. There were no enclosures on Hudson street. In 1786, Christopher street was a lane, and had fences on each side of it; it terminated in Sandy Hill road east, and Greenwich road west.

PETER EMBURY, testified, (January 5th, 1842.) that he was in the seventy-sixth year of his age; has resided in the city of New York his whole life, except five years, from 1829. That prior to the Revolutionary war, and as long back as he can recollect, the property about and above St. Paul's Church, on the west side of Broadway, and between that and the river was considered to be the property of the corporation of Trinity Church, and was called and known as church property. He cannot specify the limits of the church property, but always understood that it extended along the river as far north as the state prison, and along Broadway as far as Duane street, or near it. He recollects that after the war, when Trinity Church was rebuilt, the vestry sold several lots on Broadway and other streets. Among these was a lot on the corner of Broadway and Chambers streets, which was afterwards purchased by Anthony Steenback, and also two or three lots on Reade and Duane streets, between Church and Chapel streets, and many others also purchased lots in that part of the city, at the same time, and before and afterwards. All the land between St. Paul's Church and Duane street, west of Broadway, was universally understood to be church property, and as far as he knows and believes, is held by Trinity Church, or by lessees or purchasers under Trinity Church. He knows of no other title to any part of such land. His lot, a little north of Duane street, is held under that title, and so are other lots above Duane street. He knows of no possession in any part of the church estate which is, or ever, within his recollection, has been, held or possessed under any other title. He has heard that the Bogardus family claimed part of the church property, and that soon after the Revolutionary war, some or one of that name took possession of part of that property near the Greenwich road, and near to the [674] Lispenard meadows, by erecting a fence and house on it, which the church immediately caused to be pulled down. He heard of no further dispute until more than fifty years ago, when a trial was had under the Bogardus title, and a verdict given in favor of the church. From that time he heard of no claim, until about seven years ago.

LEWIS C. HAMERSLEY testified, (December 17, 1841,) that he was seventy-four years old, and had always resided in the city of New York, except five years and eight months during the revolution, when he resided in New Jersey. His whole family belonged to the congregation of Trinity Church, and his father served as a vestryman of that church from 1784 to about 1810, and died in 1819, being then nearly ninety-four years of age. Witnesse's grandmother was one of the heirs of Bogardus, who claimed a large part of the property owned by Trinity Church. He has been frequently present at conversations between his father and Mr. Bogardus, who managed the claim on behalf of the heirs. Bogardus frequently applied to his father for money to carry on the claim. Moneys were advanced to him, but not to any large amount. Others also claiming to be heirs of Bogardus, talked with his father on the subject of the claim. M. Bogardus seemed to be the only acting person. From the time of the evacuation by the British, deponent had a general knowledge of the church property, and after the time of his father's election to the vestry, a more particular knowledge of it. A committee of the vestry, called the committee of leases, of which his father was chairman, met at his house. It had the management of the church property under the direction of the vestry. The general bounds and limits of the Church Farm were these, as he always understood. On Broadway it began on Partition, (now Fulton street,) it run up Broadway, he did not know how far, but Reade street was part of it. He did not know much about the bounds

from there, but it included Hudson and Greenwich streets up to Christopher street, and also Williamson's nursery, and a public house above it, and went down to the river, and then followed the course of the river down to Partition street. The church has been in possession of the property he has described, from the time he first be- [675] came acquainted with it, except what they have sold or given away, except at one time there was a house called a possession house, which he had never seen; it was somewhere in Warren or Chambers street, about half-way between Broadway and the river.

Somewhere about the year 1785, the sheriff of the city, with his deputy, some of the vestry and others, went to dispossess the Bogardus's of that house. The people in the house fired on them, and wounded one of the party. The Sheriff pushed forward, took possession of the premises and delivered it to the church, and it afterwards remained in the possession of the church. The possession house was an old house that the Bogardus family hired, or some how got the possession of. The vestry of Trinity Church received the rents of the Church Farm, and the proceeds of what they sold since he became acquainted with it. He never understood that the church ever accounted to any of the Bogardus heirs, for any part of the rents or proceeds; if they had, his father would have claimed his portion, as one of the heirs. In the conversation he has spoken of between his father and the heirs, he never heard them allege or pretend that the church had accounted, or were to account, to the heirs for any part of the rents or proceeds of the Church Farm, or that the heirs were in possession of any part of the Church Farm, save the possession house, at the time they were in possession of it. His father told Bogardus that a paper had been found, which convinced him that the Bogardus's had no right to the property. His father said a gentleman, by the name of De Hart, in General Hamilton's office, had found the paper, and the vestry had given him a piece of plate as a compliment for finding it. As to that part of the Church Farm, which lies on Warren, Chambers, Reade, and Duane streets, he remembers the vestry of the church widening Warren and Chambers streets a long while ago, more than forty years ago. He has seen the committee of leases leasing property on Warren, Chambers and Reade streets. The lots on these streets were in the possession of tenants of Trinity Church, or persons to whom the church had sold or conveyed. He has never heard of any of the heirs of Bogardus being in possession of any of the lots on these streets, claiming title adverse to Trin- [676] ity Church, except the possession house. Deponent does not now belong to the congregation of Trinity Church.

The plaintiff declined reading the cross-examination of this witness.

Being re-examined, he says: The land about the possession house, which he mentioned to have been claimed by the Bogardus heirs, was notoriously within the limits of the Church Farm, at the time when they were turned out by the sheriff, as before stated. From the conversation between the heirs of Bogardus and his father, before referred to, he understood the church to be in posession of the land claimed by the heirs, and to claim title to such land as owners. He does not know of any act, or proceeding, or declaration, on the part of any of the officers of Trinity Church, going to show or acknowledge, that the church held any part of the property called the Church Farm, as tenants in common, with the heirs of Bogardus, or any of them, or in any manner for their benefit. He has never heard any of the Bogardus heirs or claimants allege or pretend that they were tenants in common with the church, or any part of the Church Farm, but within a few years he has heard some of their descendants say that there had been such a thing.

ADOLPHUS LOSS, testified, (January 21, 1842,) that he is in the 72d year of his age, and has resided in the city since 1797, except two years. Is the brother of Charles Loss, who was a city surveyor. When witness first came to New York, he entered in the employ of Charles, and assisted him in the performance of his duties as a city surveyor. In 1806, he was appointed a city surveyor, and has ever since acted as such. That, in 1799, Charles Loss was employed by the corporation of Trinity Church, to survey, lay out, and make a map of the lands called the *Church Farm*, and he completed the survey and made a map thereof, which map (except as hereinafter mentioned,) is the same map now produced and shown to deponent, entitled, "a map of lands belonging to the corporation of Trinity Church, commonly called the Church Farm, and of the lands adjacent, New York, April, 1799;" the whole of which title, in- [677] cluding the name of Charles Loss, is in his proper handwriting. That, of the other words and figures in the map, many are also in the handwriting of Charles Loss, and many others in the handwriting of this deponent. That he assisted Charles Loss in surveying the whole of those lands, and in the delineation on the map of the bounds thereof, and of the courses and lines of the streets running through the same, and of the lines of the lots into which the lands were then divided, the whole of which work was done with great care and accuracy. That, in running the easterly boundary line of those lands, through the meadow or swamp along the line of Bayard's West Farm, there was some difficulty as to the precise location of that line, but it was finally established as represented on the map; old Mr. Barrow, then collector of the church rents, directing and assisting therein. That such easterly boundary, except through the swamp, was indicated by fences, and that in running out and marking the line, there was no dispute or difficulty whatever. That, at the time of making such survey and map, the whole of the land bounded on the south by the north side of Partition, now Fulton street, from Broadway to the North river, on the east, by Broadway from Partition street, to the line represented on the map between Reade street and Barley, now Duane street, on the north by the last mentioned line from Broadway to Duane street, and then along Duane street to the North river, and on the west by the river; and also, the land between Duane street and Christopher street, bounded eastwardly from Duane street up to North Moore street, by Hudson street, and between North Moore street and Christopher street by the estates of Bayard, Herring and others, northwardly on Christopher street, and westwardly on the North river, was then, and is yet generally understood, reported, and considered, to compose the estate of the corporation of Trinity Church, commonly called the Church Farm. That parts of those estates were then under lease, and were severally occupied by Mr. Lispenard, Mr. Brannan, Colonel Burr, one Williamson, who had a nursery and garden, and by General Morton. That the leased lands are distinguished on the map as follows: Those occupied by Lispenard, Brannan, Burr, by the names of those individuals, and a representa- [678] tion of their mansion houses; those occupied by Williamson, by the word "Nursery," and the representation of trees; and that those occupied by General Morton, were on or near Christopher street, and comprehended the land between the river and the old line of Greenwich road, along which line was a thorn hedge, as represented on the map.

These lands were not then divided into lots, nor were any of the church lands north of Burr's lease, nor those bounded on Clark and Dominick streets, which streets deponent, at a late period, surveyed at Mr. Barrow's request, and laid down on the same map. That, for nine years after his first coming to New York, he was employed as assistant of Charles Loss, and subsequently as one of the city surveyors, was frequently employed to run out and survey lots for the corporation of Trinity Church, and by means thereof, and of his other employments as a city surveyor, he has had a particular knowledge of the northwestern section of the city of New York, including all the lands called the Church Farm; and that neither on the survey above mentioned, or on any other occasion, or at any time since, except within the last few years, has he ever heard of any possession of any part of the estate called the Church Farm, other than such as was held by the corporation of Trinity Church, or tenants or purchasers under that corporation.

On cross-examination, Mr. Loss testified that in making up his new maps, he did use an old map which was shown to him by Mr. Barrow. This was Bernard Ratzen's map, done in 1767, so far as it goes, but the original extends farther. The tract of land covered by witness's map, was not laid out in streets and blocks and lots, as represented on such map, except to Duane street. There were no streets laid out upon the land; there were no houses or fences, except Harison's, near the river, as shown on Ratzen's map; a tavern near General Morton's place; also, General Morton's house, Burr's, Brannan's, Lispenard's, and the Brewery, and these were enclosed; but besides these, the tract lay open and vacant, and unimproved, as far as he recollects. There may have been two or three others, but he does not recollect them. There was a fence between Bayard's and the Church Farm, on the east side.

[679] EZRA WEEKS testified, May 10, 1842, that he was in the seventy-first year of his age, and resided in the city of New York from 1793 until 1834, and was a master builder during the greater part of that time. From 1796 he always lived in that part of the city in which the land of Trinity Church, called the Church Farm, was, and is situate, and from his active business he had a general acquaintance with the real estate in that quarter. In 1797 he purchased of the church, three lots of land on Greenwich street, between Harrison and Provost streets. About 1800, he purchased five other lots from the church, three on Harrison and two on Provost streets, all which lots have ever since been held by him and those deriving title under him, without dispute and interruption, to his knowledge. That the church, from the time of his first residence in the city, down to the time of his removal to the country, were universally reputed to be the owners of the lands called the Church Farm, which, as he always understood and was generally reputed, extended along the North river, from St. Paul's Church to Christopher street, embracing all the lands on Broadway between St. Paul's Church and a point near the Hospital ground; he cannot describe accurately the east line of the Church Farm after it left Broadway, but understood it ran through the meadow, and in part along the west line of Bayard's west farm, of which deponent, in 1802, purchased two blocks adjoining on the west to the east line of the church land. The Church Farm was generally reputed and understood to comprehend several large parcels of land which were leased for long terms by Trinity Church, prior to the war of the Revolution, and which were severally known as Lispenard's lease, Brannan's Garden, Richmond Hill, and Williamson's Nursery. On Christopher street, there was a tavern kept called the Indian Queen, and on the opposite side of the Greenwich road, a considerable piece of land, which was for some years possessed by Gen. Morton; these two last properties were bounded on, or were near to, Christopher street, and were also reputed and understood to be held by lease under the church. All the land about St. John's Church and St. John's Park on Hudson street, and the cross streets between it and the river, and on Reade, Chambers, Warren, Church and Chapel streets, and on and to the west of that part of Greenwich street [680] lying north of Partition street, was also reputed and understood to be part of the Church Farm, and he has never since he first became acquainted with this estate, known or heard of any possession in that part of the city, otherwise than under the church title. That public and private sales of lots throughout that part of the city, were continually made by the officers or agents of the church, from 1797 to his removal from the city, and the rents of unsold lots were during all that time, collected for the church by Thomas Barrow, or after his death by his son, James Barrow, who were severally called collectors of church rents. In 1822, he was elected a vestryman of Trinity Church, and continued such until 1834; that whilst such vestryman, he took an active part in the management of the estate and concerns of Trinity Church, and never at any time heard of any pretence or claim by or on the part of the complainants, or any of the Bogardus family, that they, or any of them, or the ancestors of any of them, were at any time tenants in common with Trinity Church, of any part of the church lands, or had any right, share or interest in or to the rents or proceeds of those lands, or any of them; but, on the contrary, he has always understood, and such he believes has been the universal understanding and belief, that the whole of the lands, and the entire rents and proceeds thereof, belonged to, and were claimed and received by the church to its own exclusive use and benefit. And he states from his own knowledge, that whilst he was a member of the vestry, the whole of the same were appointed and applied to the use of Trinity Church, without the least idea of any such tenancy in common, or of any such right, interest or claim on the part of the Bogardus family, or any of them.

JAMES BARROW testified, October 31, 1845, that he is in the seventy-first year of his age, and has always resided in the city of New York, except some few years after the twenty-first year of his age. His father, Thomas Barrow, also always resided in the city, and was, in 1794, appointed agent and collector for Trinity Church, and continued such until his decease, in 1825, when deponent was ap- [681] pointed to the same office, and has continued ever since, such agent and collector. That he and his father, as such agents and collectors, were in the habit of receiving all the moneys payable to the church, from the lessees, tenants or grantees; and he assisted his father as such collector and agent from 1813 until he was appointed such collector. That by means thereof he became acquainted with the management of the church estate, and of the receipt and application of the rents and proceeds thereof, and during the whole of that period the church made numerous sales and leases of lots of land on their estate called the Church Farm. The leasing was conducted formerly by the committee of leases, and now by the standing committee; the sales were principally at public auction, and sometimes at private sale. That ever since he began to assist his father, the church has, according to his best knowledge, and as he believes, been in the sole and exclusive receipt and enjoyment of the rents, issues and profits of the land called the

Church Farm, claiming to have and hold the same as sole and exclusive owners thereof. That in all the indentures of lease thereof, granted by the church, the rents reserved therein were received and enjoyed by the church as sole owners of the land, and the same and the proceeds of sales thereof were appropriated by the church, from time to time, to its sole and separate use and benefit, or disposed of at the pleasure of the vestry. That neither whilst he was such agent and collector, or whilst he assisted his father, has he ever paid or accounted to the complainants in this suit, or any of the Bogardus family, any part of such rents or proceeds, or to any other person claiming any estate or interest therein, except the church, nor has his father ever so paid over or accounted, as he knows or believes. Nor has he ever heard it alleged or pretended, or in any way acknowledged that any part of such rents or proceeds was received or held by the church in common, and undivided with, or as trustee of the complainants, or of the Bogardus family, or any of them; or that any other person or persons except the church had or claimed to have any estate or interest in such rents or proceeds of sales, in common with the church, or that the church was bound to pay over on account for any part of the same to any person whomsoever, or that they had any share or interest in common or undivided; [682] or any other share, interest, claim or demand whatsoever in the same or any part thereof. And he has never heard the sole and exclusive right of the church to the receipt of the same to its own use and benefit, disputed or called in question, until the commencement of this suit.

In cross-examination, Mr. Barrow testified, that he had never heard of any appropriations made by the vestry except entered on their minutes, which he sees whenever he wishes. Being asked as to the boundaries and extent of the Church Farm, he described it generally, as extending from Fulton street to Christopher street, as mentioned in the deposition of Mr. Loss, and he has seen the map known as Loss's map of the Church Farm, made in 1799; he has seen no other; he has not seen any map wherein the name of *Queen's Farm* is given to it. He then produced Loss's map, which is owned by Trinity Church, and the examiner marked it as an exhibit on the part of defendants. As agent and collector, his duties are performed in the vestry office, where he has opportunity of seeing the minutes of the vestry, in which all appropriations are entered; he makes out the rent roll and is in possession of it, and the proceeds of a collection roll are accounted for monthly to the comptroller. He has had access to the vestry books and the comptroller's general account of their receipts and expenditures. As to the ownership of the lands which the complainants claim, his knowledge is derived from the maps and the general possession by the church, and from the rent rolls he has, and from his knowledge of the boundaries as laid down in the maps, since his agency, from the year 1813. From that time he has been more familiar with it. The rent roll marked, includes all the property in the boundaries of the map he has referred to, which rent roll is made out by himself from the map of the property. The Loss map comprises all the Church Farm that he has ever seen or known, and considered to be such. He has heard the present comptroller, and Mr. Ogden, the attorney of the vestry, say that the lands claimed by the complainant are within the boundaries of that map of Church Farm. It is not his [683] official duty to know to whom money is paid by the vestrymen or corporation. He does not think that the vestry could make payments to any person or persons without his knowledge, from the manner of their making appropriations, and entries thereof on their minutes; and also from the comptroller's books, through whom all payments, expenditures and appropriations are made by the vestry and entered in his books, which are audited annually. He speaks, of course, since 1813.

William Johnson testified, November 3, 1845, that he now resides in the city of New York, and has lived in the city more than 50 years, and is upwards of 70 years of age. He became a vestryman of Trinity Church in this city in 1821, and has been a vestryman ever since. He became comptroller thereof in 1827, and resigned it in 1842. He succeeded Richard Harison when he resigned in 1827. Mr. H. died about two years after his resignation. His duty as comptroller, was to receive all the moneys arising from the sales in fee of lots and rents, issues and profits on leases; to make all payments and expenditures as authorized by the vestry, countersigning the deeds. The comptroller received all the moneys of the corporation and made all expenditures. He was acquainted during the time he was comptroller, with all the leases and sales of lots made by the church, and the rents and proceeds of sales, and the application thereof, and of all payments and expenditures made by the church. Whilst a vestryman, he was also acquainted with all the transactions of the vestry, but not with that accuracy as when he was comptroller. (The witness then testified in the same manner as Mr. Barrow, as to the exclusive possession and receipt of rents and proceeds of the Church Farm by Trinity Church to its own use, and negating any tenacy in common, or claim of that kind.)

On cross-examination, Mr. Johnson testified that he has always understood the church claimed title to the land in dispute in this cause, under a grant from Queen Anne. He does not recollect of any ancient surveys in the possession of the church, as part of its records or evidences of title, showing what was the northern limit of the Queen's farm. He does not recollect of any copy of the Dutch pat- [684] ent to Anneke Jans or Bogardus being in possession of the corporation.

Samuel Gilford, jr. testified January 4, 1842, that he resided in the city of New York, and is in the 68th year of his age, and has resided in the city ever since his birth, except during the Revolutionary war. He returned to the city in September, 1783. He has been acquainted with the estate of Trinity Church for more than fifty years last past. (The witness then described it.) He cannot state the eastern bounds of the Church Farm, but has always understood that it embraced the property held by Lispenard, the property called Brannan's Garden, that occupied by Colonel Burr called Richmond Hill, the land occupied by Williamson, called Williamson's Nursery, and the land occupied by General Morton, which bounded on Christopher street. He became conversant with this property when a boy, the more from being in the habit of going frequently through this part of the city to visit the family of old Mr. Clarke, who lived at Greenwich, and owned the estate called Chelsea. He was also in the habit of visiting the boys of Mr. Lispenard's family, and when at college from 1789 to 1793, the collegians were in the habit of frequenting this part of the city to bathe, and for recreation, both at Brannan's Garden, and at the place afterwards held by General Morton, where cherries were to be procured. This part of the city was generally reputed to belong to, and to be exclusively held and possessed by the corporation of Trinity Church, and by tenants of or purchasers under that corporation. The land on Warren, Chambers and Reade streets, and that part of Duane street lying a short distance from Broadway, and also

the land on Broadway from Partition street to the neighborhood of Duane street, was universally considered to be part of the Church Farm, and so far as he has ever known or heard, and as he believes, has always since the peace of 1783, been in the peaceable and uninterrupted possession of Trinity Church, and of tenants and purchasers under the church, excepting only that he recollects a great many years ago to have heard that a fence had been put up by people claiming against the church, and was pulled down by persons [685] employed by the church. With this exception, he has not known or heard that the church title was disputed until a few years past. He has never known or heard of any lot on either of the streets last mentioned, or on any other part of the Church Farm, being held or possessed under any other title or claim save that of Trinity Church.

On cross-examination, Mr. Gilford testified that the land northward from Chambers street to Christopher street, and from the North river to Chapel street, and in that direction towards Christopher street, in 1786, 1787, 1788 and 1789, was generally vacant, except places enclosed, viz: Vauxhall, Curtenius's furnace, Lispenard's brewery and dwelling house and gardens, Brannan's garden, Richmond Hill house, Williamson's nursery, which he considered was the northern boundary of the Church Farm; (Williamson told him he had a lease from the church;) General Morton's place, west side of Greenwich road, and Harrison's brewery. These are all the enclosures he recollects. He does not know that any person paid rent for the eacant grounds.

BENJAMIN M. BROWN testified, September 19, 1843, that he was in the 51st year of his age, and has always resided in the city of New York, except for the last five years. His father, William Brown, was for 37 years, prior to his resignation in 1819, sexton of St. Paul's Church, and deponent, from his early boyhood, was in the constant habit of passing through and over the land called the Church Farm. That in 1830 he was elected a vestryman of the corporation of Trinity Church, and continued such until his removal from the city in 1839, and during all that time took an active part in the management of the property and affairs of the corporation; and was for eight years a member of the standing committee, to whom such management was more particularly confided. (This witness testified like the others, as to the extent of the Church Farm, and its exclusive possession and enjoyment in severalty by Trinity Church.) At the period of his earliest recollection, there were but few houses in Chambers, Reade, or Barley (now Duane) streets, or in the lower part of Warren street, where [686] it intersects the Greenwich road, now Greenwich street. North of Warren street was a hill, over which this road passed. After rising the hill, the first building on the west side was Harrison's brewery, close to the North river, and in or about the block between Jay and Harrison streets. On the east side of the road, nearly opposite the brewery, was Speth's oil mill, in or near Harrison street. The next improvement was Lispenard's place, of several acres of land, lying along the Greenwich road. His mansion house was east of and at some distance from the road, and near to what is now called Desbrosses street. North of Lispenard's was a tavern, a place of public resort, called Brannan's Garden, which was also on the east side of the Greenwich road, and adjoining what is now called Spring street. North of and adjoining to Spring street, and also on the east side of the road was Richmond Hill, containing several acres of land, on which Col. Burr resided. The mansion house thereon is now called the Richmond Hill Theatre, between Charlton and Vandam streets, and stood where it now stands on a hill since levelled. North of Richmond Hill, on the same side of the road, was an extensive garden and nursery of trees, occupied by one Williamson, called Williamson's Nursery, through which now pass the streets called Le Roy, Morton and Barrow streets. Next to this nursery, on the same side of the road, there was a piece of land adjoining Christopher street, on which was a tavern called the Indian King, and opposite to it and the nursery, was a piece of land lying on the west side of the Greenwich road, along which there was a long hedge of white thorn, and which was possessed by General Morton, and extended from Christopher to Le Roy street; all which parcels of land, at the time of his first knowledge of them, were, and ever since have been generally reported and considered to be parcels of the land called the Church Farm, and to be held under leases from the corporation of Trinity Church. The land occupied by Lispenard being always designated as Lispenard's lease; that occupied by Brannan, as Mareschalk or Brannan's lease; that occupied by Col. Burr, as Mortier's or Burr's lease; and that occupied by Williamson, as Williamson's Nursery or Garden.

[687] WILLIAM H. HARRISON testified (before the examiner, November 7, 1845,) that he resided in the city of New York, and had so resided from his birth, and always on the western side of the city; is now 50 years of age. He is a member of the vestry of Trinity Church, and is the comptroller thereof. He was elected a vestryman in 1833, and has continued such ever since; and in 1842, he was appointed, and has ever since been comptroller. The office of comptroller was first established in 1815. His father, Richard Harrison, now deceased, was first comptroller, and served twelve years. During the greater part of the time his father was comptroller, they kept their offices together, and he gave him such assistance as he required. The comptroller has the general charge of the fiscal and temporal affairs of the corporation, under the direction of the vestry. The rents and all other moneys are received in his office, and no moneys disbursed or paid, (except small office expenses,) but upon his check. The comptroller negotiates all sales and lettings, under the advice of a committee of the vestry. The deponent has been acquainted for some time back with all leases and sales of its real property, and the rents and proceeds of sales, and the application and payments thereof. He was more acquainted with them from 1834 to 1840, whilst a member of the standing committee. Since he became comptroller, he of course knows every item. Whilst his father was comptroller, he had a general knowledge thereof. He frequently had the accounts to copy, and saw the check book at all times. He has known the property bounded by Warren street, the North river, Christopher street, West Broadway, Duane street, thence to Broadway, and along that street to Warren street, from his childhood, and hardly any changes were ever made therein, without being noticed by him immediately. Knows of sales of lots therein by the church at an early date, say 1810 or 1811. Since 1815, he knew of sales constantly. It was called the church property, and the occupants reputed to be tenants. In 1824 to 1826, he knew of a great deal of property being let, and the particulars of the leases. Since he became comptroller, he knows every transaction. There have been several sales in fee, and many lots leased, or leases renewed. No person ever joined with the church in the deeds or leases of their [688] property to his knowledge; but they were executed exclusively by the corporation of Trinity Church. His father was for a great number of years clerk of the corporation, prior to his being comptroller, and all conveyances

were drawn by him. The rents, issues, profits, and proceeds of sales of all the property in the possession of the church, within the bounds before described, as far as he knows and believes, have been received and enjoyed by the corporation of Trinity Church and their assigns, and are yet so received and enjoyed. He is positive during the time of his connection with the corporation and as respects the portions of the property remaining unsold and not granted away. To the best of his knowledge, they were received to the sole, separate use and benefit of the corporation of Trinity Church. He never knew or heard but that the church claimed to be owners in fee, and of right to receive, as sole owner of the lots of land described, to their own use and benefit, the rents, issues, avails, profits and proceeds. His knowledge extends back to the time before testified to. He never heard or knew anything to the contrary, or of any accounting or payment of any part of such rents, issues, profits, avails and proceeds of sales, to any person or persons, claiming the same as of right, under title adverse to the corporation, or as tenants in common with it or claiming any other estate therein; and never heard of any demand upon that corporation for such accounting and payment by any person, except the demand in this suit. He does not know and has never heard, that the corporation ever held or possessed their lands, or any part thereof, or any estate or interest therein, or any rents, issues, profits, avails, or proceeds of the same, or any part thereof, or any share or interest therein, or any part thereof in common or undivided with, or as trustee of any person whomsoever.

On cross-examination, Mr. Harrison, testified that he believes the minutes of the vestry are regular and complete from 1705 to the present date. He does not know of any deficiency of evidence to maintain the title of the church to the lands above described; on the contrary, he be- [689] lieves the quantity of evidence is overwhelming. He could tell the rent of any lot thereof. The church has the lease or counterpart. It is probable there may be some old account books of the treasures, but he never referred to them. He believes the taxes were invariably paid by the tenants. If the taxes were paid by the church of such lands as were not let at those dates, he could only ascertain the fact and the amount, from those accounts in the old books, although he is not sure that, as the law was then, church property was always taxed. The seal of the corporation has, as long as he has known and always as he believes, been exclusively in the keeping of the clerk, who is a corporate officer; and is never used but under authority from the vestry, general or special. Their deeds of conveyance, and all other acts and leases, are always sealed with their corporate seal.

49. The defendants then read in evidence, an exemplification from the office of the secretary of state, of the commission from Queen Anne to Lord Cornbury, as governor of the province, dated the fifth day of December, in the first year of her reign. Amongst the powers conferred upon him, he was authorized to make grants and conveyances of land in the province, which on being passed in the secretary's office, and sealed with the great seal of the province and entered on record, were to be valid and effectual to vest the title in the grantees.

COMPLAINANTS' TESTIMONY

ELIZABETH BOGARDUS testified, February 5th, 1842, that she is 74 years of age, and is the widow of John Bogardus, the original complainant, to whom she was married in 1783.

In the spring of 1784, she and her husband came to the city of New York on a visit to his father, Cornelius B., who then lived in a frame house on the south or lower corner of Chambers street and Broadway, with his wife, one daughter, his son, Henry, and the wife and child of the latter, and a son of C. B.'s wife. Cornelius B. spoke of the house and the land he lived on, as being part of the land inherited by him, and the other heirs of Anneke Jans, commonly called at that time by him and others, the Dominie's Bowery and the Dominie's Hook, which extended northwardly from Chambers street; she does not remember how far. He always spoke of the Dominie's Bowery [690] and the Dominie's Hook as being the lands he claimed. He lived in that house for three years after the peace.

About a year after the close of their visit, the deponent and her husband returned to New York, and lived in a house at the south or lower corner of Broadway and Reade street, with her husband's brother, H. B., all of whom were put in possession by Cornelius B., as his tenants. Mrs. Alexander came to live there with Henry. Henry moved away in about six months after deponent went there to live. We occupied a separate part of the house while there. Deponent and her husband lived there about four or five weeks, and then removed to a vacant house and lot at the north corner of Reade and Chapel streets, were put in the same by Cornelius B., as his tenants, and lived there more than a year. The house is still standing and is occupied as a blacksmith's shop, being on the now corner of Hudson street and Broadway. When they left this house, Cornelius B. West put them as his tenants into a house in Chambers street on the north side, about three lots west of Broadway, where Thomas Eagles had lived several years, and then lived. He held as tenant under the Malcolm's as she understood, who claimed to be the heirs of Anneke Jans. He gave up the possession to one McCullum, who, as deponent understood, gave up his possession to the Malcom's. Deponent and her husband next moved into a house in Warren street, as tenants of one Carpenter, and lived there one year, and then they lived in a house between Chambers and Reade streets, about three years, and after that in a house near where Masonic Hall now is. Cornelius Bogardus left the city of New York about the time she and her husband moved from the Reade street house, now a blacksmith shop.

Cornelius B. sold clay from a clay pit, situate betwixt Reade and what is now called Thomas street, and near Hudson street. His claim to it was notorious, and it was always talked that it belonged to him, and no one disputed it. He made them pay a shilling a load for it, and sued some who did not pay, and collected from them.

Dominie's Hook and Dominie's Bowery were spoken of as two distinct pieces of land; she cannot say which [691] was the sixty-two acre piece. She was shown by her father-in-law a part of the lands called by those names which he and others claimed as heirs of Anneke Jans, all the land along the river northerly of Warren street, where Greenwich and Hudson streets now run, including Lispenard's place, and all others west of what is now West Broadway. That this land lay open and vacant, and but little of it besides Lispenard's was fenced in; and she heard from Cornelius B. and others that he had plowed and raised a quantity of wheat on a field, part of that land, before the Revolution, and just as he was going to reap it some persons broke into the field and destroyed it.

Several persons were put into possession of parcels of that land by Cornelius B., viz.: William Harris, Abraham Delamater, John Duffie, John Smith, John Johnson, Michæl Sanford, and Amos La Farge. Cornelius B. was absent

from the city all the war. At the peace, he came to live with La Farge as a boarder. All these persons paid rent to Cornelius B., while deponent was there on a visit, and was living in the houses in Reade street; and the receipt of rents from them was spoken of by him in her presence. The houses so let by him, were small wooden houses of no great value.

Cornelius B. put his brother Lewis into possession as his tenant, of a house and lot, near and perhaps on what is now Hudson or St. John's square. It was a slightly built house called a possession house, and surrounded by a fence, inclosing as much land as is now in that square or more. Cornelius B. claimed this as his, and took possession of it as part of the tract called Dominie's Hook and Dominie's Bowery. Lewis Bogardus kept possession of it as such tenant, for six or seven months, and as deponent believes, until about the time Cornelius B. left the city, which was in 1786 or 1787, as she believes. Deponent used very often to visit Lewis B. in that house, then called the *possession house*, and he never was disturbed in the possession of the house or lot, but occupied both quietly and peaceably, without interruption from any person, but his wife was afterwards turned out. Cornelius B. said his taking possession of that piece [692] of land, was the same as taking possession of the whole land which the heirs claimed as heirs of Anneke Jans.

That a Mrs. Broad entered upon and took possession of a piece of ground, near North Moore street, called *the Fort*, claiming to own it as one of those heirs. There was a sort of breastwork and trench, and a house within it. She drove away people who came to take earth from the banks of the fort, by throwing boiling water on them. She kept possession undisturbed, from the time the British left till 1787 or 1788, claiming as such heir. She claimed all the land outside of the fort and along the river above and below. There were several instances of open controversy between the church and her father-in-law, after the peace. He set up a fence near Provost street, inclosing may be 100 feet square to take possession of the whole tract and show his claim of title; and after it had stood several days, some persons tore it down and burnt the fence boards. The church party after this built a fence on the vacant land, and this was burnt by the Bogardus party. This was in the day time, many were engaged in the conflict that ensued, great violence was used and the church party finally drove the other off, the recorder of the city being there as it was said, to assist the church party. In one of these quarrels, some of Cornelius B.'s men were taken up by the city government and he became bail for them, but they were never punished.

Lewis Bogardus's wife was with force put out of the house he held, in his absence, with her children and furniture, by men who said they did it under authority of Trinity Church. He went and found another place. Deponent has no interest in this suit.

Cross-examined, the witness testified, the Dominie's Bowery and Dominie's Hook composed one parcel of land as she has always understood, and lay between Broadway and the North river, bounded on the south by the north line of Warren street, north by the south side of Duane street as far as Chapel street, then went up Chapel nearly to Beach street, then took a turn and came back to Chapel, then went up to a little above Laight street, then to Greenwich street, and up that street to a stone bridge where Canal [693] street now is, and then ran to the river. The Bowery or Hook did not include Lispenard's farm. All her information about this is derived from her father-in-law and his family.

She does not know how he got possession of the two houses and lots on Broadway, in which he and his sons lived after the peace, nor whether he paid rent for them. Knows nothing of any demand or distress for rent. Does not know who went into the house corner of Broadway and Chambers when Cornelius B. left it. Mrs. Alexander remained in possession of the house corner of Reade street when deponent left it. Cornelius B. was never in possession of either, after he removed from the city. The lot occupied by Eagles on Chambers street, she thinks was the fifth lot from Broadway. Does not know how or under whom he first occupied it; heard his children say he had promised when he left it, to give it up to the Malcolm's. One of his sons told her that Eagles was angry because McCullum had given it up to Malcolm.

The house in Warren street deponent lived in a part of as stated, was rented by her husband from one Carpenter; does not know how Carpenter held it. All she knows as to Harris, Delamater, Duffie, Smith, Johnson, Sanford and La Farge being put in possession of their respective lots by Cornelius B., is that she understood from her father-in-law, and others of the family, that this was the case and that those persons paid him the rent.

The house she and her husband lived in at the corner of Chapel and Reade street, was on the north side of Reade and the west side of Chapel street; there were two lots with the house, and the premises were vacant when they moved in. She does not know who possessed it before, nor who came in when they left it. Cornelius B. did not take possession, she does not know why; and cannot say how he got possession of any of the lots she has spoken of. He never resumed possession of any of the property, or received any rents, after he left the city, to her knowledge. It was understood in the family, and generally reported, that he had given up or sold out to the church. Does not know who pos- [694] sessed the parcel near Hudson Square, before Lewis Bogardus went on to it; understood from the family that Cornelius B. put him into possession, and that the church turned him out. Cornelius did not again go into possession of it. She does not know how Mrs. Broad got into possession of the fort; has heard she claimed as an heir of Anneke Jans a part of the Dominie's Bowery and Hook, but deponent knows nothing further about her claim; nor about her length of possession, or the church buying her out, except from hearsay and report.

She has not known or heard of any possession by Cornelius B. or any of his family, of any part of the Church Farm, since he removed from New York in 1786.

Re-examined, she says she heard the church gave her father-in-law £650 for giving up his right. This she heard from his sons, and it was the general talk in the family. He was poor and soon spent all that money.

(*Note.—The* complainants depositions were taken subject to all objections to the questions and evidence which might be proposed at the hearing.)

MARGARET DRIEMER testified November 18th, 1841, she was 83 years of age in June, 1841. When she was seventeen she removed to New York with her father. A year after, she married Dr. Abram Teller, and moved to the upper end of Warren street, close by the Presbyterian meeting house near the Park, two doors from Broadway on the north side; lived there a year; then two years and a half in Slaughter-house street; then a year by the Battery gate; then a year in Chatham Row in lawyer Jones's house by the

iron-handle pump. Were there when the American troops came into New York and the English evacuated the city. She and her husband then moved into a house he hired of lawyer De Hart, as agent of widow Brewinton, on the corner of Broadway, the west side, opposite the negro burying-ground. The street run down to the river, but did not cross Broadway. In front of it were the red barracks behind the old jail. Cornelius Bogardus lived on the opposite corner from deponent, in a pretty old wooden house. Deponent lived there 2½ to 3 years, and Cornelius B. lived there when she moved away. He claimed to own [695] the house and lot he lived in. Deponent does not know under what title. She heard him and one Sackett talk about it. He said at that time, he would sell gravel from the hill at the foot of that street, and that he had sold gravel from there. Rails were brought down the river, and a fence built around a large tract, inclosing the gravel hill and the possession house. The fence was soon after torn down and the rails burnt on the ground. After this Bogardus said the possession house belonged to him and the other heirs, and was built to keep their possession. The people that burnt the fence were in uniform, or were disguised, and had sticks, but no arms. It was done about ten in the evening, about two years after the evacuation of the city.

Lawyer Sackett published a book about the title of the heirs to the property in possession of Trinity Church, and the heirs came down from the country, said they would go to law about it, and then the heirs put up this fence.

Cross-examined.—My husband, Dr. Teller, was one of the Bogardus heirs. The house hired of De Hart, she understood belonged to widow Brewinton; but she does not know how Mrs. B. got it. It was a part of what was called the Church Farm. Deponent's husband paid the rent of the house to De Hart, before the dispute took place. The reason it was not paid afterwards was, that the heirs told Dr. Teller not to pay it, because the property belonged to the Bogardus's heirs. Our goods were distrained for rent and replevied. The rent was never paid or called for after that to my knowledge. De Hart came and wanted the house given up to Mrs. B., which was refused, but Dr. Teller said he was going into the country, and she might then have possession. He moved out and delivered up the key. The house Cornelius B. lived in, was a part of the Church Farm, which, as deponent always understood, extended up Broadway, crossed over to Lispenard's brewery, and then up the North river to Bayard's. After the fence was burned, the church and the Bogardus heirs went to law, and were in law when deponent removed from the city.

[696] JOHN RUGAR testified, November 19th, 1841, that he was ninety years of age. That he and his wife went to the city of New York to live, in 1785, lived a year in Murray street, and next lived a year at the corner of Warren and Chapel streets. Then moved into a house in Warren street, called Vauxhall, near the river, on the east side of the road leading up to Greenwich, and lived there three years. The second year, he thinks, after he went to New York, he saw a fence building, east of the old furnace, along the east side of Greenwich road, running up from Vauxhall and off in an easterly direction. The fence was cut down and burned the evening of the day it was put up. Deponent did not know any of the men concerned in or directing, either the building or destroying the fence. He knew a Mr. Bogardus in those times, but did not know where he lived.

Cross-examined, the witness testified, he understood the land about Vauxhall belonged to Trinity Church. Does not know the extent of the land of which this was said. Vauxhall was a large inclosure; was not then used as a garden, but was afterwards. There was a pottery on it then. Deponent hired one room there, of a man who hired the whole of Vauxhall, and let out the rooms. The ground inclosed by the fence he saw built, was vacant ground, beyond which and towards Lispenard's, there were several houses. Lispenard's brewery was on the road near the river; his house was off to the east, on the same side of the road with the brewery. All the land beyond Lispenard's, was inclosed with fences up to the place where the old state prison was. The fence that was cut down and burnt, was never put up again as deponent knows, and believes.

MARY BOGARDUS testified, November 19, 1841, that she is seventy-three years old, and is the widow of James C. Bogardus. She moved with him into the city of New York, in April, 1786. They first lived in a house at the corner of Broadway and Chambers streets. The house was her father-in-laws, Cornelius C. Bogardus, who, with his family, and the family of his son Henry, lived in the house. In the winter following, Cornelius B. moved into the country. Henry and James and their families remained in the house till the following May. They lived there quietly [697] and peaceably, and no one called for rent that she knew of. She never heard Cornelius B. say the house belonged to him, or that the church or any one else claimed it against him. He lived in it and she thought it was his. She never saw the gravel hill at the foot of Chambers street, but has heard him say he had sold gravel from it. A person at the sand or clay hill sold the gravel and kept an account of it, and gave accounts of it to her father-in-law. Never saw him pay any money to the latter. Deponent heard of the possession house, and of Lewis Bogardus being put in possession of it, on a hill near Lispenard's. She has heard of a fence being burned down near the possession house; this was the year before she went to the city. Lewis B. was not in the possession house long. When deponent and her husband left the corner of Chambers street, they lived six months in a house in Warren street, near Broadway, and then a year and a half in Broadway, a few doors below Chambers street. They then removed to the country. She never heard of the claim of the heirs of Anneke Jans to the property of the church while she lived in New York, nor until of late years. Her father-in-law was always called the heir of Anneke Jans. She never heard his right to the house he lived in, or to sell the gravel, disputed.

Cross-examined.—The gravel hill was an open common. Isaac Bush, the brother-in-law of Cornelius B., was the man who sold the gravel. He lived with Cornelius B., and acted for him. She does not know who claimed the land in and about Warren street while she lived in the city, nor that it was possessed by tenants of Trinity Church, or claimed by the church. The possession lot was inclosed by a high fence; was a large lot and used for a pasture, as she heard. She cannot say who went into the house, corner of Chambers street, when they left it. No rent was demanded of any of the Bogardus's while they lived there. Lewis B. left the possession house before deponent removed from the corner of Chambers street. She does not know who occupied it after Lewis B. Left it. She has heard of a large piece of land called the Church Farm, whilst or since she lived in New York. She knows nothing [698] of its bounds or extent; and does not know that any part of it was claimed by Anneke Jans; but Cornelius C. Bogardus claimed the Dominie's Hook as such

heir, against the church, and also other land towards the battery.

GEORGE W. CHAPMAN, testified, August 9th, 1842, that he is eighty-one years of age. He came to this city in 1790, and resided in Greenwich street. He knew an old woman who lived in an old redoubt, and she lived there until she was dug away, when she made a compromise. This was not earlier than 1793, or later than 1795. Old Mr. Thomas Barrow was there and represented the church. The old woman defended herself with hot water against those who came to dig her out. Deponent advised her to hold on her possession until she could get something for it because he thought it was in the way of opening Greenwich street.

The land bounded south by Chambers street, west by the river, north by what is now Canal street, and east by what is now West Broadway, was nearly the whole of it enclosed. Does not recollect any of it that was uninclosed, except the part west of Greenwich street, which was open.

Cross-examined.—The witness testified, that the redoubt was nearly at the foot of Chambers or of Reade streets in the neighborhood of that, and he believes about one-half of it was on what is now Greenwich street. It was not large; was sixty yards inside, perhaps eighty. His impression is, that the object of digging away the redoubt, was to open Greenwich street. He then thought the dispute was between Mrs. Broad and the city corporation; he understood afterwards, it was her and Trinity Church. He knows nothing of any compromise between them, except by common report. He never heard, either from her, or how she claimed, or that she claimed under the same right as the Bogarduses'. The dispute between her and Trinity Church, as he heard afterwards, was about the claims of the Bogardus family for property held by the church. (The three last answers were on the complainant's examination.) There was a brewery on the west side of Greenwich street, called Rhinelander's, he thinks; this was above Duane, and perhaps above Jay or Harrison streets. On the east side of [699] Greenwich road was Spader's oil mill. Does not recollect any other building above that, at that time, till they came to Lispenard's. There was a fence which ran from Lispenard's to the east part of the redoubt, and then turned east and ran up Barley street to Broadway. Deponent does not know whether Spader's mill was considered church property. He considered it, and all the property east of the fence, to be Lispenard's.

The complainants next read in evidence from the recital thereof, a patent, or ground brief, from Petrus Stuyvesant, governor of the New Netherlands to Anneke Jans, widow and relict of Dominie Everardus Bogardus, dated July 4th, 1654, for a parcel of about 62 acres on the Island of Manhattans, as in Gov. Nicoll's confirmation.

They next read in evidence a certified copy from the secretary's office, of the deed of confirmation, of Gov. Nicolls, dated March 27, 1667, described in the bill of complaint. The recital and description in this deed is as follows:

"Whereas, there is a certain parcel of land lying on this island Manhattans, towards the North river, which in the year 1636, was the land and bowery of Anna Bogardus, to whom and her husband, Roelefe Jansen, it was first granted by the then Dutch Governor, Walter Van Tweller, at which time the said Roelefe Jansen, first began to manue the said land and to build thereupon; the limits whereof did then begin from the fence of the house by the strand side, so running northeast to the fence of old Jans' land. It's in length two hundred and ten rod; then going along the fence of the said old Jans' land southeast, it reacheth to a certain swamp, and is in breadth one hundred rod, and striking along the swamp southwest, it's in length one hundred and sixty rod, and from the swamp to the strand going west, it's in breadth fifty rod. The land lying on the south side of the house to the fence of the land belonging to the company, and so to the east side, begins at the fence and goes south to the posts and rayles of the company's land, without any hindrance of the path; it's in breadth sixty rod. In length on the south side along the posts and rayles, one [700] hundred and sixty rod. On the east side to the entrance of the Chalk Hooke, in breadth thirty rod; and along the said Chalkie Hook on the north side to the fence of the land before mentioned, going west is in length one hundred rod; amounting in all to about sixty-two acres." The deed then deferred to Gov. Stuyvesant's grant last mentioned, and then ratified, confirmed and granted the premises unto the children and heirs of Anneke Bogardus deceased, in fee, rendering and paying a quit rent.

The complaints next read in evidence a copy from the office of the secretary of state, of a grant from Gov. Nicolls to the children and heirs of Anneke Bogardus, confirming a grant of the same therein recited, from Gov. Stuyvesant to her, dated November 26, 1652. This deed was dated March 27, 1667, and the premises are recited and described as follows, viz: "Whereas there is a certain parcell of land lying on the north side of Maspats Kills, upon a neck of land commonly called or known by the name of the Dominie's Hoeck, beginning at Peiter Andrison's fence so to run two hundred and five and twenty rod, on both sides, having in breadth on the south side one hundred and seventy-five rod, and on the north the like quantity, being surrounded by the Kill, and on the west side by the river, amounting in all to about one hundred and thirty acres and three hundred seventy-five rod, for which said parcell of land Anneke Jans, the widow and relict of Dominie Everardus Bogardus had heretofore a patent or ground briefe, from the late Dutch Governor Petrus Stuyvesant, bearing date the 26th day of November, 1652."

The complainants next read in evidence, the letter from the committee of the vestry of Trinity Church, dated December 2, 1785, a copy of which appears, *ante* page 637; and the copy of a deed of transport inclosed in that letter, which is set forth at large at the same page.

The complainants then read in evidence, from an edition of the Colonial Laws, (1 Bradford, 36) the colonial act of May 12, 1699, annulling various "*extravagant grants*," made by the then late governor Fletcher, among which was the lease of the King's Farm to Trinity Church; and enacting that thereafter it should not be in the power of any governor to grant or demise for any longer than for [701] his own time in the government, (among other lands enumerated,) the King's Farm and the King's Garden as being the demesnes of his majesty's Fort of New York, and for the benefit and accommodation of his majesty's governors for the time being; and every grant for a longer time should be null and void. (1 Van Schaack's Col. Laws, 31.)

Also the journal of the Assembly of 1699, showing a communication from the Earl of Bellamont, then governor of the province requesting the passage of such an act.

They next produced a copy of Gov. Dongan's charter to the city of New York, granted in 1686, (Kent's city charter, 24,) in the 16th section of which the King's Farm is saved and reserved to his majesty from the grants made to the city.

Also the charter of Gov. Montgomerie to the city of New York in 1732, (Kent's city charter, 83, and notes, p. 174,)

in the 37th section of which "the land called the King's Farm" is excepted from the grant.

Also the colonial act of October 14, 1732, confirming Gov. Montgomerie's charter to the city. (Van Schaack's Laws, 169.)

Also the colonial act of November 4, 1733, (Van Schaack 177,) which, by a note in the margin of Mr. Van Schaack's edition, appears to have been confirmed by the king Nov. 7, 1734. This repealed the limitation in the act of 1699 so far as it respected the swamp and fresh pond called **The Fresh Water.** In the preamble it recited the act of 1699, so far as it related to the swamp "adjacent to the **King's Farm,** formerly called the **Duke's Farm."**

The complainants next referred, as a part of their case, to the *Charter of Liberties,* so called, passed May 6, 1691, which was disaffirmed and repealed by the king May 11, 1697. (3 Rev. Stat., Appendix 1, 4; 1st ed.) This provided for colonial laws having full force until disallowed by the king.

The complainants next read, in evidence, the assembly journal of 1785, under date of February 8th, showing the report made by a committee appointed to examine the laws and records of the State concerning the right and title to the lands in the city of New York formerly called and known by the name of the *King's Farm and Garden.* The committee reported *a state of facts,* which is [702] entered on the journal, concluding with an opinion that the King's Farm and Garden were, before the revolution, of right vested in the King of Great Britain, and now belong to, and are of right vested in, the people of this State. The report was concurred in by the House, and a resolution adopted for the appointment of a committee to consider and report of the mode of establishing the right of the people to those lands. The *state of facts* contained a reference to Gov. Fletcher's lease in 1697; the whole of the act of 1699 annulling Gov. F.'s grants the repeal of that act in 1702, Lord Cornbury's grant to Trinity Church of the Farm and Garden in 1705; the proceedings in Queen Anne's council, June 15, 1708, and her proceedings in Queen set forth; the exception of the King's Farm and Garden in Gov. Montgomerie's charter to the city; and repeal in 1733, of the vacating act, as it respected the swamp.

March 31, 1785, the committee brought in a bill entitled 'An Act appointing agents to prosecute the claim of the people of the State to the lands therein mentioned," which on the 9th of April, 1785, was ordered to be engrossed; April 11 the bill was read a third time, and recommitted to a committee of the whole; April 14 it was again under consideration, and was amended. As it there appears it related to lands in the State generally, and directed that no such suit be brought unless the agents should be of opinion that the people had a legal right to the lands. The agents named were the Attorney General, Ephraim Paine, and Brockholst **Livingston.**

The complainants read, in evidence, from the Senate journal of 1785, as follows: April 14, a message from the Assembly was received, with the bill for concurrence, appointing agents, &c., (as before expressed) which was read, and ordered to second reading. April 16, read a second time, and committed to a committee of the whole. April 23, the committee made some progress on the bill, and had leave to sit again.

(No further proceeding appeared to have been taken on this bill in the Senate.)

The complainants subsequently, by consent, produced and read as a part of their evidence: 1st. A certified copy of the proceedings in the colonial council, held at Fort Anne, in the city of New York, February 13, 1708, [703] (meaning 1709) in which were entered at large the order of the Queen in Privy Council, made June 15, 1708. The order recites that the Governor, Council, and Assembly, have the power to make laws, which are to be transmitted to her majesty for her royal approbation or disallowance, and, thereupon, it confirms, enacts, and ratifies the act of 1699, vacating the extravagant grants. &c., and disapproves and disallows the act of 1702, repealing the act of 1699, and the act of 1702 is thereby repealed and declared nul and void.

In the same colonial council minutes, are entered at large the Queen's additional instructions to the then governor, (referring to the foregoing confirmation and repeal,) and saying that thereby several large tracts of land are resumed to the Queen, and are in her disposal to re-grant; and instructing him that he may re-grant to the patentees, on certain terms, which terms are to apply to all future grants.

2. The following letter or instructions from the Queen to Governor Hunter, viz:

"ANNE R.

Trusty and well beloved, we greet you well.

Whereas, our trusty and well beloved, the Rector, Church wardens, and Vestrymen of Trinity Church in our city of New York, have by their humble address, represented unto us, that our right trusty and our right well beloved cousin and councillor, Edward, Earl of Clarendon;* our late governor of our province of New York, did grant a lease of our farm to them for seven years, under the rent of sixty bushels of wheat yearly, payable unto us, (the like having been before granted by Colonel Benjamin Fletcher, Governor under our late royal brother, King William, with the like reservation,) but as these rents were esteemed a perquisite of the several governors, for the time being, the said Colonel Fletcher, who was a great benefactor and promoter of the first settling of that Church, did remit the rent dur- [704] ing his time for that pious use, as also did the Earl of Clarendon so much as accrued under the lease granted in his time.

And that the said Earl, for promoting the interest of the said Church, and settling a lasting foundation for its support, did by virtue of the authority derived from us, under our great seal of England, grant the same farm under the seal of our province of New York, to the Rector and inhabitants of the city of New York, in communion of the Church of England, as by law established, and their successors forever, under the yearly rent of three shillings.

But that the corporation of the said Church, are now prosecuted in our court of chancery there, in our name, for the several rents reserved on the leases before granted, and by the several governors before remitted, and that our letters patent for the said farm, are rendered disputable, and therefore humbly imploring that we will be graciously pleased to give such directions for stopping the said prosecution as we shall think fit.

We, taking the premises into our royal consideration, have thought fit to signify our will and pleasure unto you, and accordingly our will and pleasure is, that immediately upon receipt hereof, you do stop the prosecution now carrying on in our court of chancery there against the said corporation, and do not suffer any further proceedings to be had in that suit, until we shall signify our further pleasure to you, and for so doing, this shall be your warrant, and so we bid you farewell.

Given at our Court of St. James, the 14th day of April, 1714, in the thirteenth year of our reign.

By her Majesty's Command,

BOLINGBROKE

To our trusty and well beloved Robert Hunter, Esq., our Captain General and Governor-in-Chief of our province of New York in America, and in his absence, to the Commander-in-Chief, or to the President of the Council of our said province for the time being."

The complainants also produced and read the *Case* prepared by the plaintiff, and settled by Tompkins J., in the suit of *Jackson ex dem. Malcolm and others* v. *Bromeling*, tried in the supreme court in 1807, as be- [705] fore mentioned. It appeared that the plaintiff relied on a possession taken by W. Malcolm soon after the peace of 1783, of the premises then vacant, with a ruinous house thereon, and maintained by him for a considerable period by one George Higday, as his tenant. The defendant relied on a possession of the premises by Trinity Church for sixty years prior to Malcolm's possession, with a documentary title. To sustain this, the same leading documentary evidence was produced as on this hearing, and aged witnesses proved Vandenburgh's possession of the Church Farm, under the church. The plaintiff produced evidence of some possessions by the Bogardus family on portions of the land. The verdict was for the defendant.

DEFENDANT'S FURTHER TESTIMONY.

The defendants again referred to the two ancient depositions of Jacob Kooning and Mary Layton, inserted *ante*, page 652.

50. They next produced and read in evidence an original record of judgment of conviction in the supreme court on a trial June 27th, 1786, in a *forcible entry and detainer*, prosecuted by John Keating, *qui tam*, &c., against Cornelius C Bogardus, tried before Richard Morris, then chief justice, for a messuage and lot of ground in the west ward of the city of New York. Morgan Lewis was attorney for plaintiffs. The record was docketed 14th September, 1786, and contained an award of restitution to Keating. The suit was brought by certiorari into the supreme court in January, 1786.

51. Also an original record of judgment in the supreme court, in trespass on lands, in the west ward of the city of New York, in favor of John Keating against Cornelius C. Bogardus, docketed 25th September, 1786, on a confession after issue joined, for six cents damages and £36 14s. 6d. costs. Suit commenced prior to October term, 1785.

52. Also an original record of judgment in trespass on lands in the west ward of the city of New York, in favor of John Keating against William Malcolm; docketed [706] 25th September, 1786. Suit tried before the chief justice, 27th June, 1786, and a verdict for plaintiff for £90 damages, besides costs. The suit was commenced prior to October term, 1785. Morgan Lewis was plaintiff's attorney in both of the suits.

The defendants next proved the signature of Richard Morris, then chief justice of the supreme court, to three affidavits, and that they came from among the title papers of Trinity Church, and they were read as follows:

53. The deposition of Joseph Forbes, of the city of New York, sworn 26th October, 1785, stated that he had a regular power of attorney from the corporation of Trinity Church to maintain and defend their possession of a tract of land, situated in the west ward, adjoining on the north side of the ruins of the old Stockadoes, between Hudson river and Rutger's meadow, containing about sixty acres, more or less, and to pull down, abate and destroy all fences and other obstructions or nuisances erected or done thereon by any unauthorized person. That by virtue of such power, he, early in the morning of the 15th of October instant, went in a peaceable manner with sundry persons named, and with several of the inhabitants of the city, for the purpose of removing a certain fence and encroachments, which he was informed had been lately erected, extending from a small redoubt near the ruins of the old Stockadoes, along the westerly side of Greenwich street; and another fence running from the corner of a house in possession of George Higday to the ground occupied by Leonard Lispenard, jr., Esq., and including part of the land granted by lease from the same corporation to John Keating. That he and his company proceeded in a quiet manner to take down and destroy the first mentioned fence, which they effected without molestation or interruption from any person. That he soon after proceeded with his said company to the second of the fences before mentioned, and began in like manner to take down and destroy it. But soon after they began so to do, he and his company were suddenly fired upon from a musket loaded with small shot, by a person who then was concealed, but whom they afterwards discovered to be the same George Higday, the same person who was lately indicted and found guilty of an assault upon the recorder of said city, when in the execution of his office. That he and his company were suddenly so fired [707] upon whilst they were in the peaceable prosecution of their business, and without any warning whatsoever, or any request to desist from the same. That he and four others named were then wounded with small shot from the musket, although the wounds did not prove very considerable. That thereupon he and his company were about to enter the house of Higday, in order to secure him and prevent his doing further mischief, he having taken refuge in the same; that when he and his company were so about to enter the house, Higday or some other person from within cried out for mercy; whereupon he and his company immediately drew off from the house. That upon the retiring of him and his company, Higday again presented his musket at them, from one of the upper windows of the house, and he verily believes would again have fired if he had not been deterred and frightened from his purpose. That he and his company then proceeded to take down and destroy the whole of the last mentioned fence, without offering violence to any person. And he further saith, that to his own knowledge the land inclosed by the last mentioned fence was in peaceable possession of the same corporation or their assigns before the commencement of the late war, and inclosed by a post and rail fence. And also that George Higday obtained possession of the house in which he now lives in a tortuous manner, and holds the same by violence, as he hath been informed and verily believes.

54. The deposition of Thomas Goldsmith, George Cole, Joseph Scott and Samuel Rogers, of the city of New York, taken on the 26th day of October, 1785, stated that they, with divers other persons, went as assistants to Joseph Forbes, as stated in his affidavit, to take down and destroy two certain fences that had been unlawfully erected (one of them lately,) upon the land of the corporation of Trinity Church, lying upon the north side of the ruins of the old Stockadoes, and in the west ward of the city of New York. Their statement corresponded with that of Forbes. They also stated that Rogers was struck with three of the shots from the musket, two of them in his face, and one very near his right eye; that Cole was struck with thirty-six of the shot

in different parts of his body, and several others of [708] the company were then wounded.

55. William G. Forbes' deposition, taken on the 1st of November, 1785, stated that some time in or about the month of April last, George Higday or Higly, applied to deponent for his leave to take possession of a house standing on the land now in dispute between the corporation of Trinity Church and Cornelius C. Bogardus and others, with the lot of ground thereunto adjoining; that the house was held with the lot of ground under that corporation, by Gilbert Forbes, his brother, who upon his quitting New York some time in the year 1783, had left them in the care of this deponent's mother, by whom they were let out to an under tenant. That when Higday applied to him, deponent had a power of attorney from his brother, and was in treaty with John Rutherfurd, Esquire, one of the church wardens of the church, for a lease from the corporation, he not having in his possession any lease for the premises; that deponent agreed with Higday that he might enter into possession of the house and ground at a certain rent, which he did accordingly; that some time after Higday again applied to this deponent to purchase the house, and promised to take a regular lease from the church for the same and the lot of ground adjoning to it. Higday has since informed deponent that he was induced by the threats of Cornelius C. Bogardus to take a lease from him, or some of those who are joined with him in their claim of that land, and to consider himself as their tenant, and not as the tenant of the corporation. Higday has never paid the consideration which he had agreed to give deponent for the house.

The defendants then produced and read in evidence the Assembly Journal of the year 1784, under the date of February 2d; by which it appeared that the house was in committee of the whole on the bill entitled, "an act for making such alterations in the charter of the corporation of Trinity Church, as to render it more conformable to the constitution of the state." February 18th, the petition of Abraham Walton and others, relative to the charter of the corporation of the Trinity Church, was presented, read and [709] referred to the committee of the whole, when on the bill. February 21st, two petitions on the same subject, likewise referred; one by John Charlton, Thomas Moore and five others, styling themselves vestrymen; the other by Leonard Lispenard, jr., Thomas Witter and others, presenting sundry names as having been chosen to be inserted as wardens and vestrymen in the bill. February 23d, the engrossed bill was read a third time and passed. Under date April 9th, 1784, the bill as amended was returned from the senate, and the amendments concurred in and the bill ordered to be returned to the senate. On the 10th of April, having been sent back by the senate, the assembly transmitted it to the council of revision.

The defendants next produced and read, in evidence, the Senate journal for the year 1784, showing that the bill from the Assembly, relative to the charter of Trinity Church, was received February 23, 1784, and read the first time. February 24th the bill was read a second time and committed to a committee of the whole. March 2, the Senate were in committee of the whole on the bill. The same fact appears in the journal of March 3d, March 25th, and April 5th, under which date appear all the proceedings had on it in committee of the whole. A motion to strike out the preamble, as now contained in the act, was lost by a large vote; a motion to strike out of the first enacting clause the words "*charter and*" was lost by a still larger vote. The bill, as reported from the committee of the whole, was then read a third time, and passed April 10th. The bill was returned from the Assembly with a message of concurrence, and was sent back by the Senate to the Assembly. On the 19th of April the council of revision sent a message to the Senate, and the like to the Assembly, that they did not disapprove the bill.

The defendants also read from the same Senate journal, under date of March 5th, 1784, showing the presentation of four several memorials, signed by twenty-five, eighty-two, one hundred and three, and one hundred and twenty-six persons, respectively, praying (in case the bill then pending before the Senate, relative to the charter of the corporation of Trinity Church, becomes a law of this [710] State) that one of the Episcopal churches may be allotted to them for the purpose of divine worship, together with a proportionable part of the temporalities of the church for the support of their minister, which memorials were read, and ordered to be taken into consideration with the bill therein mentioned. On the 10th of March two like petitions were presented and referred, one signed by forty-four, and the other by forty-one persons.

The defendants next read from the Assembly journal of 1784, in November, the presentation of the petition of Nicholas De Reimer and others, claiming to be the descendants of Anneke Jans and her heirs, and to be entitled to the Dominie's farm, or Bowery.

November 24th, a committee reported on the petition that the question was one to be determined in the courts of justice, which report was adopted. November 22nd, 1784, a resolution was adopted by the House, raising a committee to examine the laws and records, and report on the subject of the Crown lands, the King's Farm and Garden, and all other lands conceived to belong to the State.

The complainants then read the Assembly journal of 1785, showing that, on the 17th of February, the committee on the subject of establishing the right of the people to the *King's Farm and Garden* reported in favor of a bill authorizing and requiring the Attorney General to proceed, without delay, to recover those lands and establish the people's claim. The House concurred in the report, and ordered the committee to bring in such bill.

The defendants then read from the same journal, under date of February 25th, showing a petition of John Rutherfurd, by order and in behalf of Trinity Church, was presented, read, and referred to a committee. March 14, that committee reported upon the memorial and remonstrance of Trinity Church, requesting that they might show cause why the report of the committee of the 8th of February should not appear on the journal of the House; that it would be improper to expunge a report agreed to and entered on the journals, and the request cannot be granted consist- [711] ently with the rules of the House; which report was concurred in by a large majority.

The defendants next read from the Assembly Journal of 1787, under date of April 16th, a concurrent resolution adopted, directing the attorney general to inquire into and report the nature of the claim of the corporation of the city of New York to Fort George and the lands adjoining thereto; and directing the Commissioners of the Land Office to cause the lands which should thereupon appear to be the property of the state, to be surveyed and laid out into lots for sale. Also, from the Senate Journal of 1787, showing the concurrence of the Senate on the 18th of April, 1787.

The testimony here closed.

W. E. Dunscomb, B. F. Butler and *D. B. Ogden*, for the

defendants, maintained the following propositions in support of the truth of the plea.

I. The plea of the defendants having been allowed by the court, and replied to by the complainants, nothing but the matters averred therein are in issue between the parties, or to be considered on the present hearing; and if they be established by the proofs, the bill must be dismissed. (Beames' Pleas in Eq. 225; Mitford's Pleas, 241; Story's Eq. Pl. § 697; Chancellor's Opinion, in 4 Paige, 195; *Fish* v. *Miller*, 5 ibid. 29.)

II. Every averment in the plea is established by the proofs produced on the part of the defendents; from which proofs the five following propositions clearly appear. (As to the nature and effect of the proof required, many of the averments being negative, the counsel cited, 1 Greenl. Ev. § 74, 78, 79; *Hollister* v. *Burt*, 1 Hill, 150; *Williams* v. *East India Co.*, 3 East, 192; *Calder* v. *Rutherford*, 3 Br. & Bing. 302.)

Subd. 1*st.* That Queen Anne was in the possession and occupation of the tract known as the Duke's Farm, King's Farm and Queen's Farm, and in the receipt of the rents and profits thereof to her sole and separate use and benefit, at the date of her grant to the church. (As to the letters patent not being signed by Lord Cornbury, 2 Bl. Comm. 305, 344, 346; Shep. Touch. 56. Unneces- [712] sary to show an entry under a good title, to support an adverse possession. 9 John. 114; 13 ibid. 118; 18 ibid. 40 and 355; 1 Cowen, 285; 5 ibid. 484; 8 ibid. 589, 596, 603, 4, 607, 609, 613, 617; 12 Wend. 602; 24 ibid. 602, 4; 5 Peters, 466; 16 ibid. 455. As to the competency of the minutes of the trial in 1760, and similar evidence, 1 Co. Litt. 169, a, 4 Cowen, 483; 1 Greenl. Ev. § 527, 527 a; 22 Wend. 549. As to recitals in public acts, Co. Litt. 19 *b;* 1 Greenl. Ev. § 491; 4 Maule & Sel. 532; *The King* v. *Franklin*, 17 Howell's State Trials, 637. As to counterpart of leases, 7 East. 363. As to grounds for presuming a conveyance from all the Bogardus heirs, to the governor or the crown; &c., &c.; 1 Greenl. Ev. § 45 to 47; 12 Ves. 239; 2 Hawk's, (N. C.) 233; 1 Caines, 89; 3 John. Cas. 109; 7 John. R. 5, 11, 12; 10 ibid. 377; 4 John. Ch. R. 296; 5 ibid. 545; 3 Wend. 152; 6 ibid. 228, 233; 4 Paige, 202.)

Subd. 2. That the church, on the day of the date of the Queen's grant, under and by virtue thereof, entered upon and became seized of the lands described therein, claiming, by force and virtue thereof, to be the sole and exclusive owners of such lands; and that such entry and claim were made by the church under that grant, exclusively of any other right. (An entry into the whole, claiming the whole; 4 Paige, 201. The possession evidencing seisin; Co. Litt. 11 *b*, 15 *a;* Adams on Eject. 252, 253; 2 Hill, 341.)

Subd. 3d. That the church, by themselves and those claiming under them, from their first entry in 1705 to the date or their plea, in October, 1831, have been in the *uninterrupted, sole, exclusive and actual seisin and possession* of those lands and every part thereof; *and in the sole and exclusive receipt and enjoyment of the rents and profits* thereof, claiming to have and hold such lands, and to be entitled to receive and enjoy such rents and profits as sole and exclusive owners thereof. (Presumption of continuance of an existing state of things, 3 Stark. Ev. 1252; 1 Greenl. Ev. § 41. Recital in lease, evidence against parties, *Jackson* v. *Carver*, 4 Peters, 1.

Subd. 4th. That the church have not paid over or accounted for to the complainant in the original bill, [713] or to either of those under whom he claims, any part of such rents and profits; and have never *acknowledged or admitted* that they were bound, either in law or equity, so to do.

Subd. 5th. That the church have never held or possessed those lands, or any part thereof, or any rents or profits arising out of them, in common or undivided with, or as trustee of the complainant or his ancestors; and have never, by themselves, or their agents, admitted or acknowledged that the complainant, or his ancestors, had any estate, share or interest, in or to such lands or any part thereof, or in or to the rents or profits thereof.

III. The testimony of Elizabeth Bogardus, and of the other witness examined on the part of the complainants, so far as the same tends to prove any actual possession, or occupation, or receipts of rents and profits, under claim of title by Cornelius Bogardus, the great-grandson of Anneke Bogardus, or by any person under him, of any part of the tract formerly known as the Dominie's Bowery, is incompatent and inadmissable as evidence of the present hearing; and so much of the depositions of those witnesses as is herein specified should be suppressed.

Subd. 1st. Such testimony is not within the issues made upon the plea; the *gist* of which issues, in regard to *possession*, when taken in connection with the case made by the bill, is that the possession and holding of the church were always for themselves in severalty, and for their sole and exclusive benefit, and not as *tenants in common* with the complainant and his ancestors, nor in trust for them.

Subd. 2d. Such testimony contradicts repeated admissions in the bill, which, while it claims that the church entered and held *as tenants in common*, and as such received the rents and profits *in trust* for the complainants and his ancestors, concedes throughout that the church have held, since their first entry, the actual and manual possession of the whole tract, and have exercised various acts of ownership in and over the same. (Construction of pleadings, 2 Atk. 632; Beame's Pleas, preface, Story's Eq. Pl. 205 to 214; 9 Wend. 548, 562; 13 Ves. 232.)

Subd. 3d. Such testimony is also incompatible with the very ground of the bill, inasmuch as it tends to show a possession and claim on the part of Cornelius Bogardus, *in severalty*, and not *in common.* (Testimony not [714] within the issue to be suppressed. Story's Eq. Pl. 28, 33, 34; 11 Ves. 240; 6 John. R. 452.

IV. The testimony of the complainants witnesses, in respect to the possession of Mrs. Broad, is incompetent and inadmissible, for the reasons stated in the preceding point; and also because it appears from the complainants own showing that she was not an heir of Cornelius Bogardus, under whom they claim, and that her possession, whatsoever it was, had no connection with the subject matter of this suit.

V. The testimony referred to in the foregoing points, even if admissible; does not disprove the plea in any particular essential or material to its truth, or to its validity as a bar to the present suit.

Subd. 1st. It appears from the defendants proofs, that at the peace of 1783, the church were in the actual and peaceable possession of the whole tract granted to them by Queen Anne, holding adversely to all the world, and by a valid and perfect title; and that all right of the Bogardus heirs, if any they ever had, in or to any share or interest in the tract, was completely barred. (4 Paige, 200; 24 Wend. 587.)

Subd. 2d. The entries of Cornelius Bogardus and of those claiming under him, made in 1783 and afterwards, were therefore mere trespasses and intrusions without right or

color of right, and did not effect either the title or the possession of the church; especially as it appears.

1. That several of the entries were effected by means of fraudulent attornments of the tenants of the church.

2. That others were made by force, or were followed by a forcible detainer contrary to the statute in that behalf; and that none of the possessions so taken and held by force, were continued for so long a time as to prevent the application of such statute. (2 Rev. St. 293, § 8, 10, enacting the existing law on that subject. Also, § 13; I. R. Laws, 96; 11 John. 504; 13 ibid. 552, 3; 6 Wend. 751.)

3. That such possessions, all and every of them, were voluntarily abandoned by Cornelius Bogardus as long ago as 1786, and that ever since that time, the actual and [715] peaceable possession of the whole tract under claim of title to the whole in severalty, has been constantly and without interruption in the church and those holding under them.

4. After the time which has elapsed since the abandonment of such possessions, it will be presumed in reference to such of them, if any, as are not fully explained by defendant's proofs, that like others of the same period, they were fraudulently or tortously acquired; and even without the aid of such presumption, they were wholly ineffectual to interrupt the legal possession of the church, as the true and only owners of the land. (*Smith* v. *Lorillard*, 10 John. 338; *Jackson* v. *Walker*, 7 Cowen, 637; *Whitney* v. *Wright*, 15 Wend. 171; also 2 John. 221 4 ibid. 202.)

VI. The plea would have been a complete and perfect bar had it merely alleged the exclusive and uninterrupted possession of the premises and receipt of the rents and profits thereof, under a claim of title adverse to the complainants since 1786; and as such a possession and receipt of profits have been clearly established, the substance of the issue upon the present plea is proved, and the defendants are entitled to the benefits thereof, even though it should be considered by the court that the continuity and exclusiveness of such possession were interrupted between the years 1783 and 1786.

Subd. 1. A plea to a bill in equity is a special answer; and the failure of a defendant to prove all the matters averred in it, leaves the case precisely as if such matters had been brought forward by an ordinary answer, except that the court, if it thinks fit so to do, may order the defendant to make the discovery sought by the bill, and from which he was protected by means of his plea. (Mitf. Pl. 368; Beames' Pleas, 325.)

Subd. 2. Before the court will in any case make such order, it must appear that the complainant is entitled to some relief. In deciding that question, the matters averred in the plea and sustained by the proofs must be considered and weighed, and if they make out a valid defence to all the relief sought by the bill, the defendant must have the benefit of such defence, notwithstanding his failure to prove other matters alleged in the plea, but not essential to his defence. (Beames, 338; 2 Ves. Jr., 668, 669.)

Subd. 3. In the present case the matters averred [716] in the plea, and which without and beyond contradiction have been established by the proofs, and constitute a full and perfect defence to all the relief sought by the bill; and constitute also the very defence set up in the plea, that is to say, an adverse possession on the part of the church, under claim of title of the whole tract in severalty, for a period sufficiently long to bar the complainants and all others. (Litt. § 484; Co. Litt. 281 *b*, 282 *a*; 1 Phil. Ev. 200, § 5; 1 Stark. Ev. 387, § 8; ibid. 1528, 1533, 1537; 1 Taunt. 147.)

Subd. 4. In the fact of the facts averred by the plea, and unquestionably established by the proofs, and of the full defence to the prayer for relief resulting from such facts, the discovery called for by the bill cannot be ordered by the court.

1. Because such discovery is only sought by the bill as ancillary to the relief, and

2. Because if made, it could not vary or impair the defence, nor help the complainants.

VII. The complainants' bill should be dismissed with costs.

G. R. J. Bowdoin, J. T. Brady and *Geo. Sullivan,* for the complainants.

Mr. Sullivan insisted on the following propositions:

I. The Queen was not in the sole possession of the Queen's farm, at the date of her grant to Trinity Church in 1705. She held it as tenant in common with our ancestor, Cornelius Bogardus. The deed of transport to Gov. Lovelace, conveyed the rights of the other heirs named in it, but did not convey his; and the king cannot disseise a subject. (Bacon's Abr. Prerogative, 630.) So the Duke of York entered as tenant in common, and the character of the possession was not changed. The grant of Gov. Nicolls shows the heirs of Anneke Jans were in possession, and the presumption is that her son, Cornelius, continued in possession.

II. At and before 1705, the time of prescription was sixty years, so that there could have been no disseisin of the Queen's co-tenant in common at that date. This is fatal to the case on the plea, because that rests on the fact [717] that the Queen was then in the sole and exclusive possession and use of the farm. The patent of 1705, only conveyed such estate as she had, viz., five undivided sixth parts of the farm.

III. The defendant's next ground of defence, that Queen Anne, by the letters patent in November, 1705, gave, granted and confirmed the farm to the then corporation of Trinity Church is not established by the proofs. The letters produced are under the seal of the province, not under her seal, though the grant purports to be hers; they have therefore no validity or vitality.

If considered as executed by the governor under a power from her, signing is necessary to such an execution. (17 Ves. 459.) The provincial seal was in the governor's charge by his commission, and he should have effixed it and signed the patent.

The queen had no power over this land, except through the colonial assembly. (Charter of Liberties, 1691; Act of 1699, annulling the extravagant grants; Smith's History of N. Y. 117, 155, 156; 11 East, 488.) The repealing act of 1702 was of no force till the royal assent was given to it, instead of which it was disapproved. The constitutions of this state in 1777 and 1822 do not save this grant; they only covered grants made "under the authority," &c., of the crown. Lord Cornbury, the most corrupt and execrable governor we ever had here, so understood the law, and withheld his signature so as not to commit himself. The title thus sought to be given to the church was illegal, and no presumption can be indulged in favor of such a title. The reservation in Montgomerie's charter, confirmed by the assembly and then by the king, shows the patent was void. There was no act of the assembly permitting the grant, as was necessary. One was passed in 1733 to enable the governor to grant the swamp.

IV. The church corporation did not enter upon the queen's

farm under the letters patent. Their entry was under the lease given them in 1702. Having a good right under the lease in 1705, and none under the patent, their possession in point of law continued under the lease. There is no entry, in their minutes, nor any act of theirs, showing an acceptance of the patent, or an intention to act under it. There could be no merger without some corporate [718] act.

V. Next, as to the possession of the Queen's farm by the church. The church, in 1705, was in as a tenant for years, and tenant in common. A tenant in common has a right to be in possession. The question is, whether it be a sole possession, like one claiming the whole? By the charter of the church, limited by the colonial act of 1704, it could not hold property to over £500 a year, and this was so until the revolution. It could take no rents or profits beyond that, and to that extent was a mere trustee for charitable purposes. A corporation cannot deforce a natural person, and where there is no receipt of rent there can be no ouster by one tenant in common against another without an actual deforcement. So every time Cornelius Bogardus walked over the farm it was an entry, and he was in possession. The possession of each was the possession of both. Cornelius B., in 1783, took possession of a vacant part of it, kept it two years and claimed it as his; of course, according to his right.

It is said he had then been ousted by lapse of time. Their plea does not so pretend. As tenant for years the church could not disseise a freehold, and could not claim a fee either against the Crown or any one else. (1 Bac. Abr. 430; Cro. Car. 592.) Their not accounting shows no ouster, for no rents were received till after 1750, nor enough till just before the revolution to come to £500, after paying expenses in respect of the land.

Since the revolution, as it would have been a breach of trust for the church to apply more than £500 yearly of the rents of this property, which cannot be presumed, they must have received the surplus for the people, and for us as tenants in common. Their legal incapacity to appropriate more than £500 makes their case different from that of an individual.

VI. The state of things since the revolution. The limitation in the act of 1704 was not repealed by the act of 1784, nor can such repeal be inferred from the act of 1788.

The accumulated fund arising from the surplus over £500 is in their hands, therefore, in trust for us, to this [719] day. The court should grant relief on the ground of public policy, and in that view lapse of time is of no consequence.

One claiming by adverse possession must show he has claimed in fee, and that, too, against all the world.

As the defendants could not so claim against the Crown or the people, to whom they were tenants for years, they cannot so claim against any one. (4 Kent's Comm.) Their claim of title in the ejectment, in 1760, was put forward in behalf of their landlord, the king. That, made to the legislature in 1785, cannot avail, because it was made with a fraudulent concealment as to the state of their affairs and the true character of their tenure.

All the leases produced are referable to their position as tenants under the Crown, as well as to a claim in fee. There was no prescription against the Crown till 1783, certainly; nor till 1788 (2 Greenl. Laws, 93,) against the people, so the sixty years prescription has not yet expired, and the church is still in as tenant.

VII. The defendant's plea is not one of the statute of limitations. It was held good as being a plea of title, and as such it is not proved at all.

But treating it as a plea of lapse of time, where do they begin their adverse possession? The plea says, at the date of their patent; but there is no proof of any commencement of it.

As to the counterparts of leases, there is no proof of any authority from the church to any one to give a single lease. The leases ought, therefore, to be left out; and there is no evidence of any claim under the patent till the trial in 1760. That would not be a bar till 1820. But this was not the adverse possession set up by the plea.

They did not sell a foot of land till 1784, which is the next thing that looks at all like a claim in fee. This, and what took place afterwards, does not support their plea of an adverse possession beginning in 1705.

VIII. The letter of the committee of the vestry of Trinity Church, in 1785, was an express claim of the title, under a conveyance which made them tenants in common with our successive ancestors, and is conclusive upon the church. There is no proof that the committee overstepped their authority.

IX. The allegation in the plea, that the church [720] had received *all* the rents and profits, and that their possession had been uninterrupted, is not proved, and is not true.

Cornelius Bogardus had quiet and peaceable possession of portions of the farm, including the house he lived in, for two years at least. He paid no rent, and no proceedings were taken to turn him out. This entry was as effectual as if he had been there ten years. He was in possession of the clay and gravel pit, and received the issues from the sale of the soil. He was not a disseisor, did not claim the entire possession, but merely his right such as it was. He made leases and received rents.

This evidence is decisive against the truth of the plea. It breaks the continuity of the possession, which it was material for them to aver and prove; shows it was not exclusive and was not interrupted, broken and gone, before 1786.

X. The whole plea must be proven. If any point is not proved the decree must be against the defendants. (*Dows* v. *McMichael*, 6 Paige, 139.) The court is not to judge as to the materiality of any of it.

In fact, every part of it is material; the title set up, as well as the lapse of time. They might have relied on the latter, but did not, and must stand on the whole plea as it is.

Mr. Ogden, in reply, referred to 1 Stark. Ev. 436; Buller's N. P. 298; 1 Sch. & Lef. 429; 3 Bro. Ch. C. 639; 2 Jac. & W. 139, 140; and 2 Smith's History of N. Y. 232, 239.

OPINION OF THE COURT.

THE VICE-CHANCELLOR.—The complainants, by their bill, claim that they, as heirs of John Bogardus, are the owners in fee of an equal undivided thirtieth of the northern and principal portion of the property in the city of New York, long known as the "*Church Farm.*" This part, said to contain sixty-two acres, extended from a line about one hundred feet south of what is now Warren street, northwardly to what is now known as Christopher street, and from the Hudson river, on the west, to what is now Broadway; as its south line, and along the line of Broad- [721] way, nearly to Duane street; and from thence its eastern boundary ran northwestwardly, gradually approaching the river at its northern extremity.

The bill proceeds on the ground that the corporation of Trinity Church, from 1705 to the present time, have been in the possession of this portion of the farm, as tenants in

common with the complainants and their ancestors, from whom they derive their title; and that the corporation is bound to account to them for their proper share of the rents and issues received from the farm, and from sales of such portions as have been sold, and to refrain from any further leases or sales affecting the complainants title.

The defence interposed to this claim is, that in 1705, Queen Anne granted the whole Church Farm to the corporation of Trinity Church in fee simple; that the church then entered into possession, and has ever since been in the sole possession, exclusive of any other right, claiming it absolutely as its own property. In other words, the defendants plead an adverse possession of the lands claimed, for one hundred and twenty-five years before this suit was commenced, under a deed conveying the lands to them in fee simple.

The highest judicial tribunal in the state, affirming the elaborate judgment of the chancellor, has decided that the defence thus interposed is valid, and a perfect bar to the complainants suit. (See the report of the case on the argument of the plea before Chancellor Walworth, in 4 Paige's Rep. 178; and in the Court for the Correction of Errors, in 15 Wendell's Rep. 111.)

The law as to the force and effect of the plea is thus established in the outset; and the great question before me is presented in the simple proposition. *Is the plea true in point of fact?* In determining the question, I am confined to the truth of the matters stated in the plea. These alone are in issue between the parties; and the statements in the bill, and in the answer accompanying the plea, are unimportant except so far as they may tend to discover or establish those contained in the plea.

Before proceedings to those allegations, I will speak of certain facts which are admitted to be true *by the form of the pleadings,* and which the complainants insist have an important bearing upon the defence. Thus, [722] it is admitted that the "Dominie's Bowery," constituting the part of the Church Farm before described was, on the 27th of March, 1667, granted and confirmed in fee, by Governor Nicolls, to the children and heirs of Anneke Jans, the widow of Dominie Everardus Bogardus, which confirmation recited a grant of the same land by the Dutch Governor, Van Twiller, to Anneke Jans and her husband, Roeloefe Jansen, in 1636, and a patent or ground briefe to Anneke Jans, from Governor Stuyvesant, in 1654. It is in like manner admitted, that Anna or Anneke Jans Bogardus had eight children, who were either living at her death or had died leaving issue; and that, by the subsequent deaths of two of her children without issue, Cornelius Bogardus, one of her sons, became seised of one-sixth of the Dominie's Bowery; that his right descended, on his death, in 1707, to his eldest son, Cornelius; from the latter to his eldest son, Cornelius, in 1759; and from the latter, on his death, in 1794, to his five children, of whom John Bogardus, the complainant's father, was one.

It is also admitted that on the 9th of March, 1670, 71, some of the heirs of Anneke Jans executed a conveyance in fee of the Dominie's Bowery, described as containing about sixty-two acres, to Colonel Francis Lovelace, who was then the governor of the province of New York. This transfer purports to have been made by William Bogardus, for himself and his brothers, Jans and Jonas, and by two of the sons-in-law of Anneke Jans,one in the right of his wife, and as attorney of another son-in-law, whose wife was deceased, and the other in the right of his wife and by assignment of one of the sons, Peter Bogardus. It does not appear to have been executed by or for Cornelius Bogardus, the son of Anneke Jans; but it describes the whole farm or bowery, and speaks of it as the farm or bowery of the grantors.

This deed or transport appears to have been recorded, but at what time is not shown, otherwise than that it is found in a Book of Transports begun in the year 1665.

Several other matters charged in the bill, which are to be taken as true on this hearing, will be more conve- [723] niently mentioned in connection with the various points upon which they are supposed to have an influence.

The plea, formally stated, contains the three following heads or propositions, viz:

FIRST. That Queen Anne, being in the possession and occupation of the tract known by the name of the Duke's Farm, King's Farm, or Queen's Farm, referred to in this bill, and of which the Dominie's Bowery is parcel, and being in the receipt of the rents and profits thereof to her own sole and reparate use and benefit, did, by letters patent, under the great seal of the province, dated November 23rd, 1705, give, grant, ratify, and confirm to the corporation of Trinity Church, in fee simple, the farm before mentioned, reserving a yearly rent of three shillings, New York currency, in lieu of all other services, dues and demands.

SECOND. That the corporation of Trinity Church, on the day of the date of the letters patent, entered upon and became seized in their demense, as of fee, of and in the farm, including the Dominie's Bowery, claiming, by force of the letters patent, and not otherwise, to be of right sole and exclusive owners of the same, and of every part thereof, in fee simple.

THIRD. That, by themselves and those claiming under them, they have, from the day of such entry, continually, down to the present time, been in the uninterrupted sole, exclusive, and actual seisin and possession of the premises called the Dominie's Bowery, and of every part thereof, claiming the same as sole and exclusive owners in fee, and have been in the sole and exclusive receipt and enjoyment of the rents, issues and profits, to their own sole and separate use and benefit, without having paid over or accounted for any part of the same to the complainants or to any person under whom they claim, and without at any time having held or possessed any part of the premises, or any rents or profits therefrom, or any estate or interest therein, in common and undivided with, or as trustee of the complainants, or of any person under whom they claim to derive title, and without ever having admitted or acknowledged that the complainants, or any person under whom they claim, were entitled to any payment or account, or [724] had any estate, share or interest, in common or undivided, in the premises in controversy.

These three fundamental propositions will be treated separately, and in their order.

FIRST. The sole possession of Queen Anne, and her grant to the defendant's corporation on the 23rd day of November, 1705.

It is to be observed that the plea does not assert that the Queen was the owner of the farm granted, or that she had any estate or title whatever. The averment relates exclusively to her *possession and its character.*

These are facts of which written evidence can scarcely be expected. Such testimony rarely exists in any case. And after the lapse of more than one hundred and forty years not only is the testimony of living witnesses to such facts utterly impossible, but even oral tradition respecting them has almost invariably faded away in the dim shadows of the past.

In their search for truth the courts are required in instances like the one under consideration, to receive evidence which would be inadmissible, if offered, respecting events occurring within the memory of living witnesses. Thus, the statements of historians of established merit, the recitals in public records, in statutes and legislative journals, the proceedings in courts of justice, and their averments and results, and the depositions of witnesses in suits or in legal controversies are, from necessity, received as evidence of facts to which they relate, but always with great caution, and with due allowance for its imperfections and its capability of misleading, and restricted, as to historical evidence, to facts of a public and general nature. (See on this subject, *Bullen* v. *Michel*, 4 Dow's Parl. Cases, 297, 323, 324.)

There is the more reason for relying upon such evidence, because on the question of the possession of land, and of the character of the claim, the acts of the claimant are competent to prove the occupation, and when he is shown to be in possession, his declarations as to the manner of his holding are always admissible, either against him to es- [725] tablish a tenancy, or in his favor to lay the foundation of an adverse possession. For a rule of evidence so familiar in actions affecting the title to lands it is unnecessary to refer to authorities.

I. To proceed to the possession of the farm at the date of the letters patent to Trinity Church.

The bill is silent as to the possession of the Dominie's Bowery, as well as the whole Duke's Farm, prior to 1705. It contains no allegation that Governor Lovelace, the Duke of York as proprietor of the province, or any other person, ever entered under the deed of transport to Governor Lovelace, except its charge as to the entry of the corporation of Trinity Church, which will be noted in another place. If any legal presumption as to the possession is to be deduced from the title having once been in Anneke Jans, and from the cautious statement in the bill as to the execution and effect of the deed of transport executed by a portion of her children, it is simply this, that on her death her children succeeded to the possession in point of law, and, on the execution of the transport, Governor Lovelace succeeded to that possession, at least to the extent of the interests of those whose title it assumed to grant. And as it assumed to convey the whole farm the presumption would necessarily be that he took possession of the whole, claiming it under the deed, unless he knew (and of this there is neither proof nor probability,) that there was one heir of Anneke Jans who was not named in the instrument.

In *Jackson, ex. dem. Preston* v. *Smith*, (13 Johns, 406,) where one purchased a lot of land and received a deed for the whole lot, in which the grantor was described as heir of the patentee, and entered into possession under the deed, and it afterwards appeared that the grantor was only one of the nine heirs of the patentee, and only owned one-ninth of the lot as tenant in common with his co-heirs, it was decided that the purchaser must be deemed to have entered under his deed as sole owner in fee of the whole lot, and that his possession was adverse to the rightful owners, and was not a possession in common with them.

A resort to legal inferences upon the admitted facts in [726] the bill, therefore, places Governor Lovelace in possession of this property, claiming the whole title in fee under a deed, as early as 1671. The subsequent transmission of his right and possession to the Duke of York as proprietor was so perfectly natural and obvious that the counsel on both sides concurred in assuming it as unquestionable. Governor Lovelace's administration terminated on the surrender of New York to the Dutch, in August, 1673, and his name has never appeared in connection with the farm from that day to the present. His title and possession (if he acquired either,) were doubtless taken in his official capacity, and vested in the Duke of York. They continued in the latter as duke, and then as King James II, till the English revolution, by which he was dethroned and exiled, and then, with other crown and proprietary lands, were transmitted to William and Mary, and, on the death of William III, to Queen Anne.

Thus, setting out with the title of Anneke Jans, and the transport to governor Lovelace, we have the legal presumption, that the Dominie's Bowery was possessed from 1671 to 1705 by the Duke of York, and the sovereigns of England continuously, under a claim of title to the whole of it by deed, exclusive of any other right; and that at the date of the letters patent, Queen Anne was in possession and occupation, and receiving the rents to her own sole use and benefit.

Next, dismissing entirely all inferences in favor of the queen's exclusive possession, arising from the transport and historical proofs before mentioned, how does this question stand upon the evidence at large?

It is proved that Governor Andross, who arrived in the province in October, 1674, leased, or assumed to lease, the Duke's Farm, to Dirck Seckers, or Seckners, for twenty years. This is shown by the original minutes of a trial in the supreme court of the colony, in October, 1760, in a suit in ejectment, relating to the Church Farm, brought against the corporation of Trinity Church, by Cornelius Brower and others. The record of the judgment in that suit is also produced. The minutes of the trial, show that the respective parties read in evidence on that occasion, very much the same documentary testimony as the parties in this suit, presented eighty-five years afterwards. Among [727] the documents then read in evidence by the Church, was an original lease from Governor Andross to Seckers, as before mentioned, which, in the minutes, is stated to bear date March 25, 1667, or 1677. The third figure is so illegible that it is read with difficulty, but it looks more like *six* than *seven*. It was manifestly intended to be entered as 1677, for Col. Nicolls was Governor in 1667, and Governor Andross was commissioned in June, 1674. The original lease is shown to be lost, and secondary evidence is therefore admissible.

In connection with the minutes of the trial the defendants produce two affidavits, one of Joseph Kooning, the other of Mary Layton, both appearing to have been sworn on the 18th day of May, 1751, before Frederic Philipse, who was then a judge of the supreme court, and whose signatures were proved by one of his lineal descendents. The purpose for which these affidavits were taken is not proved. From their form and contents, it may be inferred that they were provided in reference to a forcible entry and detainer, or some similar proceeding, which became unnecessary or was dropped. Kooning, in his affidavit, deposed that he was eighty-one years of age, and had known the Church farm or King's farm about seventy years; that sixty-five or seventy-years before the time of his deposing, Dirck Sicken, otherwise called Dirck Dey, lived in an old thatched house on that farm, and after his death his widow possessed the farm and their son, Tunis. He further deposed that one Joris Ryerse married the widow of Tunis, and possessed the farm, first under the government, and afterwards from the English Church. Mary Layton deposed that she was eighty-

four years of age, and knew the facts stated by Kooning to be true.

The question being not as to the estate or title, but solely as to possession and the accompanying claim, the minutes of the trial and the two affidavits appear to be good evidence to show that Governor Andross in 1677 assumed to control the farm as the property of the government ,and to demise it as such for twenty years. (4 Dow's Cases in Parl. 323, 324, before cited.) And in a matter of so much public concern and notoriety as the demesnes of the proprie- [728] tor and of the crown, which formed the subject within a few years thereafter of constant and bitter controversy and frequent legislation in the colonial assembly, these documents are competent to prove, at this remote period, what was the general reputation and understanding as to the possession and the claim of and in the Duke's farm, as well as the assertion of the claim itself. It is strongly fortified and corroborated by the historical evidence hereafter noticed.

In 1686, in the charter granted by Governor Dongan to the city of New York, the farm in question is reserved to the crown, and is described as the *"land without the gate, called the King's Farm,"* the Duke of York having succeeded to the throne on the 6th day of February, 1685.

This was a direct and solemn assertion of the enjoyment of the possession and the claim of the title by the government, which was unchallenged at the time, and of so public and notorious a character that it leaves no room for doubt as to there then being well known and indisputable facts.

On the 6th of August, 1694, Governor Fletcher, in the name of the king, granted the swamp or fresh-water pond to John Evans; and in the letters patent the lands granted are described, both in the recital and in the grant, among other bounds, as being *"adjacent to our farm commonly called and known by the name of the Duke's Farm.*

This is another solemn public act of the government under the great seal of the province, asserting a claim to the whole title and the possession, and also asserting that the farm was known as the Duke's Farm; thus connecting the claim with the *duke's* ownership before 1685, and showing that his title had in 1685, been so long continued and so notorious as to have attached his name to the property.

Next we have a lease executed by Governor Fletcher, in the name of the crown, to Trinity Church, for the identical farm in question, designating it as *"our farm called and known as the King's Farm,"* and the location and extent of the property, were apparently so well known that there is no description of it by metes or bounds, or otherwise than as the King's Farm, on the Island of Manhattan, and adjacent to the city of New York. The lease is dated August 19th, 1697, was for seven years from August 1st, 1698, and reserved an annual rent of sixty bushels [729] of wheat.

Next is the act of the colonial assembly, passed May 12th, 1699, "for the breaking, vacating and annulling several extravagant grants of land made by Colonel Fletcher, the late governor of this province under his majesty." Among such grants recited in the act, is that to John Evans, and the lands granted are described as "adjacent to the *King's Farm,* formerly called the *Duke's Farm,* on the Island of Manhattan"; and Governor Fletcher's lease to Trinity Church in August, 1697, is also called "an extravagant grant of the *King's Farm.*" (1 Van Schaack's Colonial Laws, 31.)

This statute exhibits in the strongest light the assumed ownership and possession of the farm in question by the Duke of York, and then by the kings of England, and the entire publicity and notoriety of such title and possession. The legislature of the colony, sitting within half a mile of the King's Farm, could not be mistaken as to these facts, when they were making a law which was to annual the late governor's demise of the farm, and to regulate its future tenure.

In this connection it may be mentioned that in 1732 the same swamp of fresh water, which in 1694 was granted to Captain Evans, was conveyed by Governor Cosby to Anthony Rutgers by letters patent, under the great seal of the province, and the grant confirmed by like letters patent, December 31st, 1733. In both of these instruments the lands are granted as "adjacent to the farm formerly called the King's Farm." The act of 1699 was so far repealed by the colonial assembly on the 1st of November, 1733, as to permit this grant to Rutgers.

On the 9th of May, 1702, Lord Cornbury, then governor of the province, executed another lease of the King's Farm to Trinity Church, conformably to the act of 1699, to continue from May 1st, 1700, so long as she should remain governor. describing it simply as the *King's Farm,* without any specific boundaries or location.

It was objected to this document that it was not signed by Lord Cornbury, and that King William, in whose name it runs, was dead prior to its execution. As to the [730] first objection, the lease is attested by the great seal of the province. The want of the governor's signature will be discussed in another place. As to the other, it was a maxim of the common law that the king never dies; and it was that part of the king which literally never dies, the sovereign authority exercised by the viceroy or governor, whose functions continued, although the person clothed with the office of king had died, and another had succeeded, which granted the lease under consideration. If it were ever questionable, the crown never did question it, and it could not be collaterally impeached. A further and conclusive answer to both objections is, that the testimony is offered not to prove title, but to establish the existence of a claim of title and a possession accordingly; so that, whether voidable or even void, the lease is equally competent to show the public affirmation by the executive of the province of the king's possession, and his exclusive right to the farm.

Next is the counterpart of a lease of the farm from Trinity Church to George Ryrse, or Ryerse, sealed by the latter only, dated January 24, 1704, for five years from May 1st, 1704, at an annual rent of £30 currency, describing the premises as *"all her said majesty's farm,"* &c.

It was objected by the complainants counsel to this lease, and to several hundred other ancient counterparts of leases executed in the same manner, that the lease executed by the corporation should be produced, and that the counterparts were only secondary evidence. Without entering into the learning of the law on this question in general, it suffices to say that, for the purpose for which all these counterparts were introduced, they were primary and competent evidence. The idea of requiring a lessor, or his heirs, in order to prove a tenacy, to produce a lease which, one hundred and forty years ago, he delivered to a tenant who was to hold for only five years, when his interest in its preservation would cease, and whose descendants to the fourth generation are probably in their graves, and those of the fifth scattered throughout the globe, is too preposterous for argument. The object of the testimony is to prove a holding under the lessor. The fact that Ryerse was in possession of the King's Farm, about the date of the lease, is unquestionable, and his parol

declarations would be competent to prove the manner of his holding. Is not his declaration in writing, [733] under seal, infinitely better and stronger evidence?

Thus, the counterpart executed by Ryerse, in 1704, when produced by the corporation (which is the proper custody,) is evidence that the latter assumed to exercise ownership over the land, and reserved the rent to be paid to the corporation exclusively. It is a sealed admission by Ryerse, concluding him as to their right; and produced by the corporation, concludes them as to the existence of the demise. And, collaterally, it establishes their claim of title, and their enforcing it upon the possession of the land. The counterpart which Ryerse received, executed by the corporation, and not by him, if produced by the corporation, would prove nothing whatever until they had shown, what at this day is impossible, that it had been delivered to Ryerse when it was sealed. (And *see Lord Rancliffe* v. *Parkins*, 6 Dow's Cases in Parl. 202, per Lord Eldon.)

The letters patent to the church, in 1705, speak of the farm thereby granted as having been formerly called the *Duke's Farm* and the *King's Farm*, and as being then known as the *Queen's Farm*, and describe it as being in the occupation of George Ryerse, yeoman; thereby further corroborating, if it were necessary, the evidence of the possession and claim of the Crown at that period.

The affidavits of Kooning and Layton state the possession of the farm by Joris Ryerse, and his claiming, first under the government, and then under the church; evidently the same person as George Ryerse. And the identity is prooved by the signature to the counterpart being Gooris or Jooris Ryers, while in the body of the instrument he is called George.

In determining the question of possession, and the assertion of title at this remote age, the historical fact that the farm in question was publicly and notoriously known as the *Duke's* Farm prior to 1685, as the *King's* Farm for the next sixteen or seventeen years, and then, as the *Queen's* Farm until its conveyance to Trinity Church, is justly entitled to the highest consideration. That it was cultivated and occupied is not questioned; nor, in view of its being [732] called a *farm* in 1677, and its close proximity to the north bounds of the then infant but growing city, can it be a matter of doubt. And such a steady, uniform designation of the farm could not have been so publicly made for more than thirty years unless it had been in the control and occupation of the officers of the government, claiming it for their sovereign. In *Jackson* v. *Miller*, 6 Wendell's R. 228, the chancellor, delivering the unanimous opinion of the court for the correction of errors, held that the circumstances of a particular lot in a large tract held in common, and then subdivided into lots, being always called and known, for thirty or forty years, by the name of one of the joint owners, furnished a just inference that there had been a partition of the tract, and that such lot had fallen to the share of the person whose name it bore, there being no evidence of any claim to hold in common for fifty years before the trial.

Again, in Governor Montgomerie's great charter to the city of New York, in 1730, Governor Dongan's charter is recited in *hoec verba;* and in the thirty-seventh section, repeating various grants to the city, the exception is again made, as it was in 1686, of "*the lands called the King's Farm.*" This charter was confirmed by an act of the colonial assembly passed October 14th, 1732.

In this case there does not appear to be a particle of proof, or a circumstance on which to found an inference, that the complainants ancestor, the first Cornelius Bogardus, was ever in possession of the Dominie's Bowery, or ever asserted a right to it; or that his right or claim was ever recognized by any person, in possession or claiming the possession, from 1671 to the date of the grant to Trinity Church.

So far, therefore, it is conclusively established that when the farm was granted to Trinity Church the Queen was in the possession and occupation of the Duke's or Queen's Farm, including the Dominie's Bowery, to her sole and separate use and benefit. And it is clearly proved, also, that the crown of England claimed to own the farm in fee, solely and exclusively, and not as tenant in common with any person or persons. All the transactions of the government officers concerning it, show an assertion of title [733] and absolute dominion over the whole property.

I have been thus minute on the first branch of the defence made by the plea, because the complainants strongest point was made on the assertion that Queen Anne held the farm as tenant in common with Cornelius Bogardus, and that the defendants, under the queen's grant, entered and held in the same manner.

Now, if it had been proved that the queen's possession was as tenant in common, the case cited from 13 Johns. 406, shows that it would not establish the position that one to whom she granted the whole in fee, would also be a tenant in common and his entry made in that character; while it is indisputable that if she were in possession, claiming the whole in fee, exclusive of any other right, her grantee would, as a matter of course, be deemed to have entered with a like claim, and to have continued an exclusive possession in severalty. In other words, if the complainants fail to show that the possession of the crown was that of one holding as a tenant in common, there is no shadow of pretence for alleging that the possession of Trinity Church ever bore that character.

The importance of the complainants effort on this part of the case is obvious from this, that *if the corporation of Trinity Church, in* 1705, *entered into possession of the Queen's Farm, under a patent or deed professing to convey the whole farm, and continued in possession, claiming the entire title for sixty years next thereafter, such possession of itself would be a complete and perfect bar against all persons, however valid their title might have been to the whole, or any part of the farm, in the year* 1705. And after twenty years of such possession, no action short of a writ of right, could have availed the adverse owner; while forty years were a bar to such an account as is sought by the bill in this cause. Such was the law of England and the law of this colony at that period. It was a sound and beneficent provision, which has so far found favor with the advancing intelligence of the present age, that the time of limitation in actions to recover lands has been shortened in this state, until it is now only twenty years, where before the [734] Revolution, sixty years were permitted to the claimant. It was a rule of law, applicable to corporations as well as individuals; it protected the humble farms and tenements of the poor and lowly as well as the manors and glebes of the wealthy and powerful. And it is a proper and just defence against old and dormant claims, in favor of the corporation of Trinity Church, and should be as readily conceded to them as it would be to the complainants, were they invoking its aid against the corporation.

II. The remaining branch of the first great proposition contained in the plea, is that Queen Anne on the 23rd day of November, 1705, by letters patent, granted and conveyed the farm in question to Trinity Church, by its then corpo-

rate name, in fee, reserving a quit-rent of three shillings annually.

The bill of complaint sufficiently establishes this fact. It first states, that on or about the 23d of November, 1705, the corporation of Trinity Church accepted and received the letters patent and grant of Queen Anne of that date, executed by Lord Cornbury, then governor in chief of the province of New York, delivered to the corporation, and duly recorded in the office of the secretary of state; and that, by such letters patent, there was granted and conveyed to the corporation, that parcel of land, &c., then known by the name of the Duke's Farm, King's Farm, or Queen's Farm, (describing it in brief terms.) Subsequently, the bill charges that in and by those letters patent, the whole of the King's Farm was granted to the corporation, including therein the shares of the heirs of Anneke Jans, who were parties to the instrument of transport in 1671. The latter clause is one of the intimations of a tenancy in common with which the bill abounds, and is not important in reference to the question immediately in hand.

The complainants having thus made the execution of the grant from Queen Anne a part of their claim, it seems wholly needless to pursue the inquiry. The defendants, nevertheless, introduced the original letters patent, under the great seal of the province of New York, signed by the secretary, "By His Excellency's command," and recorded among the patents, in the secretary's office. An objection was made to the letters patent, because they do not bear the signature of the governor, Lord Cornbury; and it was urged that an agent, executing a deed for [735] his principal, must always sign as well as seal the deed. The last argument proves too much, because an agent thus executing must sign the principal's name, adding his own as attorney. (*Townsend* v. *Hubbard*, 4 Hill's R. 351, in the court for the correction of errors; and *Townsend* v. *Corning*, 23 Wend. 435, in the supreme court.) Therefore, to have made the execution of this patent valid in form as the deed of Queen Anne, according to the complainant's argument, it should have been signed, "Anne, by her governor or attorney, Cornbury" and, moreover, should have had her own seal, and not the seal of the colony, appended to it.

Laying aside the suggestion as to the seal, I venture to say, that not an instance has ever been known, among the hundreds of letters patent of various descriptions granted here while New York was a colony, or in the thousands of similar instruments executed in the name of the sovereign in England, where such a form of execution was used.

The distinction is, that these letters patent are emanations from the sovereign power, the evidences of the pleasure or bounty of the government, and are attested by the governmental authorities as public acts.

The commissions from the sovereign to the provincial governors were never signed by the monarch in person. They were attested by the privy seal, and by the signature of the officer intrusted with its immediate custody.

Those commissions, in the colony of New York, authorized the governors to make grants of lands, which on being passed and sealed with the great seal of the province, and entered on record, were to be good and effectual.

The sovereigns of England never granted lands by deed. Their alienations were always of a higher character, being known in the law as *alienations by matter of record*. The grants were recorded in the proper office, and the great seal was affixed to the transcript, as evidence of the grant to the public. The *letters* of gift or transfer were thereby made *patent*, or open to the world. In practice whatever rescript or authority for letters patent emanated from the sovereign personally, whether under his sign-manual or by [736] writ of privy seal; it formed the warrant for the officer holding the great seal to affix the same to the letters patent, and was retained as his authority for the act.

It is very evident that grants of land in the colony, pursuing the forms used at home, were frequently, if not usually, made without the governor's signature and in the precise form of attestation that is used in the letters patent of 1705 to Trinity Church.

The letters patent granted in 1732, and again in 1733, by Governor Cosby to Anthony Rutgers, for the swamp or fresh water, so called, at or near the Colch or Collect, were attested precisely like these, by the great seal and the deputy secretary's signature, and were not signed by the governor.

Governor Fletcher, it appears, signed the letters patent to John Evans in 1694, before mentioned, and the lease to the corporation of Trinity Church, as well as the charter to that church in 1697. On the other hand, Lord Cornbury, when governor, did not, so far as it appears, attach his signature to such instruments; nor did Governor Montgomerie, or Governor Cosby, who succeeded him. The charter of 1708, granting to the city of New York the ferry rights between Manhattan Island and Long Island, and the lands on Long Island opposite the city, between low and high water mark, was not signed by the governor, but is attested like the grant to Trinity Church in 1705 .

So of the charter granted to the city of New York by Governor Montgomerie, on the 15th of January, 1730; which, besides the great seal, has only the approval of the attorney-general; yet, it is the existing charter of the most powerful and important municipal corporation in America.

The letters patent granting the Church farm appear to have been recorded in the secretary's office, in Liber No. 7 of Patents, fol. 338, &c. But the indorsement on the original does not state the date of the recording, nor is it proved. It however appears that the patent granting the swamp to Evans in 1694, was recorded in the same office, in Liber No. 6 of Patents, page 470; and as it was annulled in 1669, and never restored, it was doubtless recorded at or about its date. Hence the grant to the church, to [737] have appeared in the next book of patents, must also have been recorded at or about the period of its execution. This is rendered the more certain from the great number of such patents executed in Governor Fletcher's time, as shown by the annulling act of 1699, and which in due course would be entered of record intermediate the grant to Evans and that to Trinity Church.

The execution of Queen Anne's grant to the defendants, as set up in their plea, is therefore established by the proofs as well as by the complainant's own charge in the bill of complaint.

There is one further objection to the grant, founded upon the act of the colonial assembly, heretofore mentioned, passed May 12, 1699, by which it was provided that it should not be in the power of the provincial governors to grant or demise the King's farm, and certain other lands, for any longer period than for their own time in the government; and declaring that such lands were for the benefit and accommodation of the governors of the province for the time being.

This act was repealed by the assembly on the 27th of November, 1702, and was not in force in the colony from that time to June 26, 1708, when the queen disapproved the repealing act, and confirmed the act of 1699. (1 Van

Schaak's Laws, 31, 51.) It is contended that the effect of her disapproval was to undo all that had been done while the repealing law continued in force.

Such a rule of construction, applied to private rights would be denounced as most tyrannical, arbitrary and unjust. For instance, we have an act of Congress requiring a residence of five years to entitle an alien to naturalization. Suppose that Congress, at its late session, had repealed this law, and enabled aliens at once to become citizens, and an alien now arriving here should take the necessary oaths, become a citizen, and purchase lands; and, at the next session of Congress the act of the late session should be repealed, would not the doctrine that thereby all that was done under the statute while it existed was avoided, be denounced as monstrous and absurd?

The principle is the same in respect of the repeal- [738] ing act of 1702. Rights acquired under it prior to the queen's disapproval, were as valid and effectual as if the act of 1699 had never been enacted.

It is further contended that the repealing act of 1702 was of no force till it received the queen's assent, and it never did receive her sanction. If the argument held good, it would be suicidal to the complainants, because the queen never approved the annulling act of 1699 till June 26, 1708, and thus the latter act was not in force when the letters patent were granted. But this was not the effect of the colonial legislation. Such statutes were valid and in force until they were disapproved by the sovereign. The governor's approval was sufficient in the first instance.

In truth, the whole discussion as to the force and validity of the letters patent, is foreign to the only question in issue; and the defence is just as perfect if the patent were defective in form and in its execution, or were contrary to the positive enactments of an existing statute; as if its validity in all these respects were conceded.

To found the defence of adverse enjoyment under a claim of title, it is wholly immaterial whether the claim be made under a deed valid in form, or under one wanting in all the essentials of a proper conveyance. Indeed, an actual occupancy by one claiming the title will ripen into a perfect right in twenty years, although he has no written evidence of title whatever.

Nor does the circumstance that the title claimed is void, or that it was taken or commenced in fraud of the law, detract from the force of an adverse possession maintained under it. In the case of *Harpending v. The Reformed Protestant Dutch Church*, the immense property in dispute was adjudged to the Church by the supreme court of the United States, on a naked plea of an actual occupancy for forty years, claiming the title adversely to the complainants without setting up any written title or claim. And although it appeared that the Dutch Church originally took the property and entered upon it under a will, at a time when they had no right to take property by devise, and when they were prohibited by law from so doing, and it was contended that such an entry in defiance of the law was fraudulent, and could never become the basis of an ad- [739] verse possession, nor prevent the entry of the true owner; yet that high tribunal declared that those facts did not impair the defence of the Dutch Church, and that their plea was a perfect bar to all the world. (16 Peters' Rep. 455.) A precisely similar decision was made by the highest court in this state, in *Humbert* v. *Trinity Church* (24 Wend. 587).

So in this case the defence arising from the possession and claim of this title is equally effectual, if proved, as if there were no question, or even criticism, on the force and validity of the letters patent of 1705. Whether they were good against the crown, or were void, they constituted a written color of title, under which the parties entered and claimed to hold the land.

All these principles as to adverse possession were decided by the court for the correction of errors, in *Clapp* v. *Bromagham*, (9 Cowen, 530.) It was there held that possession under claim of title, with or without a valid deed, is adverse; and though the possessor's title is clearly defective, yet the true owner must sue within twenty years, or his entry is barred. And that the entry of one of several heirs, claiming the whole and denying possession to his co-heirs, and selling the land to a stranger, constitutes a possession adverse to the co-heirs, and, being continued twenty years, bars their right of entry. (See also *Jackson, ex dem. Vanderlyn* v. *Newton*, 18 Johns. Rep. 355; and *La Frambois* v. *Jackson, ex dem. Smith*, 8 Cowen, 589.)

SECOND. The second head or proposition contained in the defendant's plea is, that the corporation of Trinity Church on the day of the date of the letters patent, entered upon and became seised in their demesne as of fee in the Queen's Farm, claiming by force of the letters patent, and not otherwise, to be of right sole and exclusive owners of the whole farm in fee simple.

The bill charges that the church entered upon the whole farm in 1705, under the letters patent, and the instrument of transport executed by the heirs of Anneke Jans in 1671. And the complainants seek to connect the transport with the entry, by a letter from a committee of Trinity Church, in 1788, to the claimants of apparently another prop- [740] erty, called Dominie's Hook.

As to this letter, I cannot add anything to the conclusive remarks of Chancellor Walworth, when this plea was before him in 1833. The letter contains no statement or admission that the church ever claimed under the transport; and if the admission had been direct and positive, it could have no influence upon the defence. The church had for eighty years possessed the property under the grant of Queen Anne, which conveyed the whole, and they had claimed the whole. The title thus acquired could not be shaken or impaired by the fact that Queen Anne, when she granted the whole, really owned but five undivided sixth parts; much less by an admission of the fact made eighty years subsequent to her grant. The letter was simply intended to point out to the claimants what it was supposed they did not know, that their ancestors had conveyed in 1671, the title which they set up in 1785. And it does not appear that the committee who wrote it were aware that Anneke Jans left any heirs save those by whom the transport appeared to have been executed.

The implied admission which the complainants attempt to derive from the letter of 1785, is far from being as strong or legitimate as that which might be supposed to arise from the circumstance of taking a deed from the real owner. Yet the supreme court decided against such an inference in *Jackson* v. *Newton*, (18 Johns. 355.)

The fact that the corporation of Trinity Church entered in 1705, and claimed, as is alleged in the plea, is abundantly proved. The lease to Ryerse, in 1704, shows that they did not then claim as owners or in fee. Every act and claim of theirs, after 1705, are those of an absolute owner of the whole estate. The rent reserved in Governor Cornbury's lease was no longer paid. No rents were ever after paid, save the quit-rent reserved in the letters patent. The church leased the land at pleasure from that period onward to the

present time, for long terms, generally for 21 years, and ranging to 99 years, and in process of time sold large portions of it in fee.

The time of their entry is fixed by the bill, as [741] cotemporary with the patent from the queen. To what else can this entry be attributed than that grant? They had no other deed or muniment of title. They received a deed in fee, they entered, and they claimed in fee. Can there possibly be a doubt that they entered under such deed? It does not appear that they had ever heard of the deed of transport. The inferences are all adverse to such a supposition. The government is never to be presumed to grant the same land twice. (*Jackson, ex dem. Stutenburgh* v. *Murray*, 7 Johns. R. 5.) The farm had been known as the Duke's and the King's, for more than thirty years, without the assertion of a hostile right or claim. And no person receiving a title from the sovereign power of the state, either at that day or this, would think of inquiring into the source of the title, or of investigating it, as in the instance of conveyances by private individuals.

There is another, and certainly, in view of all the facts a very strange argument, urged against referring the entry in 1705, to the letters patent, and according to it, the character of a claim of title adverse to any other right. It is, that the corporation of Trinity Church continued in possession as tenants to the crown till the American Revolution; and from thence to the present time have been the tenants of the people of this state. This position, it is to be observed, is directly in the teeth of the bill of complaint, which alleges positively that the church entered into the farm under the transport and the letters patent, and thereby became and were *seised as tenants in fee, &c.* And it is directly in contravention of the letters patent, as stated in the bill, and as proved. Much of the argument, it is true, was based upon the alleged invalidity of the grant of Queen Anne, of which I have already said quite enough. But it was urged with apparent gravity aside from that point. Now, I have been unable to discover a particle of evidence in support of the idea that the church continued in possession of the farm as a tenant, holding over after the expiration of Lord Cornbury's lease; while the mass of evidence introduced in support of the next head of the plea, is uniform and conclusive to the contrary, in every instance. As to the permission of the government to their continued occupancy, coupled with the oft-asserted ille- [742] gality and nullity of the grant, in 1705, there is much testimony rebutting both positions, and none in favor of any such permission. I should have alluded before, to the extended but vague and undefined allusions to the conduct of Lord Cornbury in reference to Trinity Church, and the singular reasons imagined for his not signing the letters patent. All of these, as well as the assertion of illegality, may be further put to rest by a recurrence to the testimony and to historical facts.

Trinity Church, as a part of the religious establishment connected with the state at home, was, from its institution favored and patronized by the government here; and to such an extent, that prior to the Revolution, it was repeatedly the cause of great offence to other religious sects, and of many political struggles and broils in the colony. The grant of the Queen's Farm, was in entire accordance with the uniform policy of the provincial government. It appears, by a paper laid before the clergy convened by Lord Cornbury, at New York, in October, 1704, that he had recommended to the Queen to bestow the King's Farm to the use and benefit of Trinity Church. In November, 1705, the grant was made, which from its extent and notoriety, and the hostility already exhibited toward Governor Cornbury in the province, to say nothing of the jealousy of those of other religious denominations, would be likely to reach the ears of the government in England, without much delay. If, therefore, the grant had been made without the previous assent of the Queen, or, being made without it, had been deemed extravagant and improvident, it would doubtless have been revoked within a year or two after its date.

Instead of any such proceeding, it appears by a letter from her secretary of state, Lord Bolingbroke, dated April 14, 1714, in the Queen's name, addressed to Governor Hunter, who succeeded Lord Cornbury, that the queen, on learning that the church had been prosecuted in chancery for the rents which Governors Fletcher and Cornbury had omitted to collect, and that her letters patent to the church were rendered disputable, directed that all such proceedings should cease until her further pleasure was signified. In this document, the grant of the farm to the church by Lord Cornbury is mentioned by way of recital, as having been made by virtue of the authority derived from the [743] queen, and granted under the seal of her province of New York, without any intimation of its being unwarranted or improper. No further proceedings were ever had, or directions given as to the suit, so far as it is known.

In the thirty-fifth section of Governor Montgomerie's charter to the city, there is an express grant and confirmation to all the inhabitants and freeholders, of all lands on Manhattan Island, to them granted and conveyed, or intended so to be, by any of the late governors of the province.

Besides this testimony, the quit-rents on the letters patent, were paid in full by the church to the colonial receiver general, in 1738, in 1751, and in 1768, and to the treasurer of this state in 1786, when they were commuted; and for one hundred and forty years, there has been no effort made or pretence set up, on behalf of the government, to subject Trinity Church to the position of tenants holding the Church Farm under the king of England, or under the people of the state.

The notion of any such tenancy having existed after 1705 is entirely unfounded.

The residue of the statement of the plea, that the corporation of Trinity Church, upon their entry in 1705, became *seised* of the farm, of and in their demesne as of fee, is not only asserted by the complainants in their bill, but is a direct and necessary consequence of their entry, claiming the whole title in fee by force of the letters patent. (Co. Litt. 15, *a; Ricard* v. *Williams*, 7 Wheaton, 59; *The People* v. *Leonard*, 11 Johns. 504.)

THIRD. The remaining proposition constituting the defendants plea, is that by themselves and those claiming under them, they have, from the time of their entry under the letters patent into the Queen's Farm, on the 23d of November, 1705, continually down to the year 1831, when their plea was filed, been in the uninterrupted, sole, exclusive, and actual seisin and possession of the premises called the Dominie's Bowery, and of every part thereof, claiming the same as sole and exclusive owners in fee; and have been in the sole and exclusive receipt and enjoyment of the rents, issues, and profits, to their own sole and separate use and benefit, without having paid over or accounted for any part of the same to the complainants, or to any person [744] under whom they claim, and without at any time having held or possessed any part of the premises, or any rents or profits therefrom, or any estate or interest therein in common and undivided with, or as trustees of the com-

plainants, or of any person under whom they claim to derive title, and without ever having admitted or acknowledged that the complainants, or any person under whom they claim, were entitled to any payment or account, or had any estate, share, or interest, in common or undivided, in the premises in controversy.

The testimony introduced by the defendants in support of this branch of their defence, was most full, complete and overwhelming. Its historical interest, and the patient, minute and almost herculean labor of its preparation and development richly merit a more extended notice than my pressing duty to other suitors in this court will enable me to bestow upon the subject. My notice of the testimony will, therefore, be brief and general.

But first, the fact that the church was in the actual possession of the property from 1705 to the present time, (with a solitary exception after the revolutionary war, which will be discussed hereafter,) is conceded by the complainants throughout their bill. They found their claim for an account upon this allegation, together with the assertion that the church held as tenant in common with their ancestors respectively.

The issue made by the plea, therefore, is mainly upon the *character* of the possession thus maintained by the church. Was it a possession claiming the whole title, ecxlusive of any other right? or was the church for more than a century occupying the land and receiving the rents for the use and benefit of the successive Cornelius Bogarduses, and the heirs of the last of the name, as well as for the church's own benefit?

It is a rule of evidence, founded on the experience of human affairs, that when a state of things is once established by proof, the law presumes that such a state of things continues to exist till the contrary is shown, or till a different presumption is raised from the nature of the subject in question. (1 Greenleaf's Law of Evid. § 41.)

[745] Starting with the conceded fact, that the church took possession of this farm in 1705, claiming it as owner under a grant of the whole from the crown, which neither mentioned nor alluded to the right of any person whatsoever, and following it with the ascertained fact, that for eighty years there was no interruption of its possession; it must be obvious to the plainest common sense that strong and cogent proof is requisite to show that during all this long period the church held merely as a tenant in common.

Instead of proof of this character, there is nothing of the kind presented on the part of the complainants; while a continued series of acts of ownership, extending through the whole period, and utterly inconsistent with any recognition of any claim, interest or right in any person other than the church, is proved on the part of the defendants.

First. The historical evidence of the claim of ownership on the part of the corporation of Trinity Church, exclusive of any other right.

The most ancient map of the city which I have met with, exhibiting "New Yorke" in 1695, limits the populated territory on the north to what is now Wall street, where there was a wall at that day. The King's Farm is laid down as extending north from a boundary line drawn near where Dey street is now situated; and the tract where Trinity Church now stands is designated as the "ground proper for building an English church." A copy of this map is to be found in the excellent Manual prepared by Mr. Valentine, clerk of the common council for the years 1845, 6.

Next is a "Plan of the city of New York, from an actual survey made by James Lyne," dated 1728, a copy of which is published in Mr. Valentine's Manual for 1842, 3, and also in Dunlap's History of New York. The most northwardly street laid down on this map, west of Broadway, is Windmill lane, about midway between the present Cortland and Liberty streets, (though lines are drawn, as if for a street where Cortland street now runs;) and the "King's Farm" is laid down as extending along the North river, an undefined distance from a point a little below the present Fulton street northwardly, beyond the present Park, [746] which was then a common. Broadway terminated at the lower end of the common, from whence the "High Road to Boston" set out, passing up what is now Park Row and Chatham street. The common extended to the "Fresh Water," which is mentioned in the grants to John Evans and Anthony Rutgers.

The map of the city of New York made by Francis Maerschalck, city surveyor, which to this day is frequently referred to in conveyances of lands, in what is now the extreme lower part of the city, was published in 1755. Upon this map the *King's Farm* is laid down as extending from Partition street (now Fulton,) northly along Hudson's river; and from Partition to Warren street it is marked as being laid out in blocks, with intersecting streets, and at great intervals scattering tenements are designated on this portion of the farm. It may be well to mention here that the *Palisades*, built in the French war, (frequently called the *Stockadoes* in the leases, &c.,) are laid down on this map as extending in a succession of lines, making obtuse angles with each other, with block-houses at the angles, from St. James street, East river, across the common (now the Park) to the North river, about one hundred and ten feet north of Warren street, crossing what is now Broadway, about the same distance above Warren street, and keeping that average distance to the river.

The History of the Province of New York, by William Smith, is a work of great authenticity; and from the circumstance that its author was an eminent lawyer, born and residing in the province, and as an ardent Presbyterian, entering zealously into the controversies of the day, especially the one relative to King's (now Columbia) College, in which Trinity Church was very conspicuous; it cannot be suspected of any partiality toward that church, or of any disposition to favor its character or pretensions. The first volume of this history was published in 1756, 7, bringing the narrative of events down to the year 1736; and the appendix contains an account of the state and condition of the colony at the time of its publication. In his description of the "City and County of New York," the author [747] describes the line of *Palisadoes* as laid down on Maerschalck's map; and in reference to the corporation of Trinity Church he says: "The revenue of this church is restricted by an act of assembly to £500 per annum; *but it is possessed of a real estate at the north end of the town*, which having been lately divided into lots and let to farm, will in a few years produce a much greater income.

In the second volume of Judge Smith's history, published by his son after his death, the author, in giving his account of the political and sectarian struggles preceding the chartering of King's college, says that, "so early as the 8th of April, 1752, the wardens and vestry of Trinity Church, by Mr. Barclay, their rector, *offered a part of the estate of their opulent corporation, in the suburbs of the capital*, for the erection and convenience of the college." Concurrently with this, we have in evidence the munificent grant made by Trinity Church to King's College, being a deed in fee to the college corporation, dated May 13, 1755, and conveying

all that part of the King's Farm lying between Barclay and Murray streets, and extending from Church street to the North river.

After the lapse of nearly a century, no higher evidence of possession and claim of title can be imagined than this, furnished from the pen of a learned and eminent historian, who, during his whole life was unfriendly to the institution whose title he commemorates; and who, on at least one occasion, as will be mentioned in another place, was employed in his professional capacity against Trinity Church, in respect of this identical property.

Next, in the order of time, is the "Plan of the City of New York," by Bernard Ratzen, a lieutenant in the British army, made from a survey in 1767. On this map Warren street is the farthest street up Broadway which has a name; but the present Chambers and Reade streets, and one block of the present Duane street, are marked out; and Church and Chapel streets are laid down, the former nearly as far north as what is now Thomas street, and Chapel street stopping south of the point where Duane street now intersects it. The *"Road to Greenwich"* is also laid down, running along and near the margin of the river, beyond [748] where Mr. Lispenard's house and garden are designated; and certain tenements are laid down as "Mr. Harrison's," west of the road to Greenwich, just above where Duane street now intersects Greenwich street. Adjoining Greenwich road, between Warren and what is now Chambers street, another garden is portrayed on the map, which corresponds in position with the place designated on Lyne's map, in 1728, as the "Bowling Green Garden." The King's or Church's Farm, is not mentioned on Ratzen's map, but the localities to which I have alluded, are prominent points in the documentary evidence of the possession of the church.

Second. The record and documentary evidence of the possession and exclusive ownership of Trinity Church, from 1705 to 1831.

The lease of the whole farm to George or Joris Ryerse already mentioned, extended to the year 1709. The depositions of Kooning and Layton, taking in 1751, already noticed, declare that Ryer Ryerse succeeded Joris Ryerse in the possession of the King's Farm, under the church; Francis Ryerse succeeded to Ryre Ryerse; and he was succeeded by one Harrison, and the latter by one Balm, who was succeeded by Cornelius Cozine. That Cozine had it for some years, and then Adam Vandenburgh took it, and he was in possession in 1751. And that all of these persons, as the declarants often heard, and always understood, held as tenants of the English Church.

Original counterparts of leases were introduced by the defendants, extending through this period as follows: From the corporation of Trinity Church to Robert Harrison, dated July 20, 1721, for ten years, for the King's Farm, recited that it was lately demised to Francis Ryerse, excepting six acres leased to W. Lake, and the lots laid out and staked at the south end of the farm. A lease from the same corporation to Cornelius Cozine, May 1, 1732, for a term of ten years, in which the land is designated as the Church Farm.

A record of conviction, and an original writ of restitution in the supreme court, were read in evidence, by which it appeared that in 1746, and indictment for forcible [749] entry and detainer, was found against Jacob Brower and others for the Church Farm, described as being the freehold of Trinity Church, in the possession of Adam Vandenburg; on the trial of which, Brower and others were convicted, and restitution was ordered to reseise the church, and put Vandenburgh in possession.

In 1750 the church commenced leasing the southern part of the farm in single city lots, and thus demised some thirty-three lots during that year, including several which were on that part of the farm claimed as the Dominie's Bowery. Most of these lots were let for twenty-one years. The number of these leases of city lots increased with great rapidity from 1750 to the Revolution, so that at the latter era almost every foot of the church farm lying south of what is now Reade street, (except the part conveyed to Columbia College,) was under lease for various terms from Trinity Church, sometimes for sixty-three years, but generally for terms of twenty-one years.

I will refer to two or three of the principal leases, as exhibiting most conclusively the entire and exclusive possession and control of the corporation over the King's Farm in different parts of the so-called Dominie's Bowery, nearly one hundred years ago.

In 1764 and 1768 respectively, the church granted two leases to Leonard Lispenard, one of eight acres and the other of over nine acres, of the part of the farm called the Dominie's Bowery; the one for a term of nearly one hundred years, and the other for more than thirty years. These tracts are situated northwardly and eastwardly of what is now known as Hudson or St. John's square, and the former is designated as "Mr. Lispenard's" on Ratzen's map, made in 1767. It was proved by living witnesses that both of these tracts had been held under these demises continuously and the eight acres down to the present time.

Elias Degrushe, on the 28th day of February, 1750, obtained a lease from the church of the three lots at the northwest corner of Warren street and Broadway, for twenty-one years. The northerly lot extended west from Broadway twelve hundred feet, almost to the bank of the river. The description in this lease shows that the farm above the long lot was not laid out in building lots; and as that below was so laid out it follows that the part of the [750] King's Farm leased *as a farm* to Vandenburgh was wholly upon the Dominie's Bowery.

The possession of Degrushe is established by Maerschalk's map, on which his ropewalk is laid down as occupying the demised premises.

The lease to Burnham of five acres at the northwest part of the King's Farm, was also given in 1750, as is noticed hereafter.

On the first of February, 1759, a lease for twenty-one years was made to one Marshall for four-fifths of an acre, called the old Bowling Green, being the same parcel which is laid down on Lyne's map of 1728, and Ratzen's in 1767.

On the 25th of March, 1769, these premises were included in a lease of a larger tract for three successive terms of twenty-one years each, to Samuel Francis. This lease was surrendered to the corporation in 1789, and a large part of the premises conveyed in fee the same year.

A lease was granted to George Harison on the 24th of October, 1765, of a tract containing twenty-four lots, between Greenwich street and the river, and situated between two streets which afterwards received the names of Harrison and Jay streets, for a term of ninety-nine years. This tract is shown by Ratzen's map to have been occupied by Mr. Harison in 1767.

On the 5th of May, 1768, the church demised a parcel of more than two and a half acres to John Keating for sixty-three years, extending from Provost (Franklin) to Moore (North Moore) street, and from Greenwich street eastwardly to Rutger's land. On this parcel some of the demonstrations were made by persons asserting the Bogardus title,

in or about 1785, which resulted in an expulsion by an indictment for forcible entry and detainer, as hereafter mentioned; and all the demised premises were north of the south bounds of the Dominie's Bowery.

To return to the Church Farm generally. A lease executed by Adam Vandenburgh was proved, by which he demised of the church on the 5th of March, 1752, [751] for five years, the whole farm north of the Stockadoes, excepting the four acres at the northwest part of the farm adjoining Sir Peter Warren's land, which had been leased by the church, February 28th, 1750, to William Burnham, as before mentioned. The lease of Vandenburgh contains intrinsic evidence that the land was used and cultivated as a farm; and all the demised premises were north of the south bounds of the Dominie's Bowery.

On the 17th of March, 1758, the corporation demised the Church Farm, (described as containing seventy-seven acres, excepting about three acres and an eighth adjoining the Palisadoes,) to Cornelia Rutgers and Leonard Lispenard, for twenty-one years. This lease was surrendered by Lispenard as survivor, on receiving the long lease of eight acres in 1764.

It was proved that in 1749 an ejectment was commenced by Cornelius Brower against the corporation of Trinity Church, for the recovery of a farm of sixty-three acres, described as in the possession and tenure of Adam Vandenburgh, and which is identified as the farm in question. The plaintiff's attorney was the historian, William Smith, Esq.; and the suit after being at issue two years, resulted in a judgment, as in case of a nonsuit. This record furnishes evidence of the possession of the farm by Vandenburgh as a tenant of the church.

Another suit in ejectment for the same premises, described as in the possession of Cornelius Vandenburgh, was commenced by Judge Smith, in favor of Brower, against the corporation in the year 1757. The suit was tried in October, 1760, and a verdict found for the defendants. This is the same suit in which the lease to Dirck Seckers was produced, as heretofore mentioned.

The defendants proved their actual possession of the church farm, claiming it as their own from 1768 or 1770 to the present time, by living witnesses, among whom were Morgan Lewis, formerly governor of the state, Peter Lorillard and Peter Embury.

The number of city lots leased by the corporation down to the year 1764, on that part of the farm in which the complainants locate the Dominie's Bowery, was from one hundred and forty to one hundred and fifty, dispersed in every direction, between Warren street and Rut- [752] ger's land. After 1764 the leases multiplied very rapidly, and more than three hundred and fifty, executed prior to this suit, were read in evidence; generally for twenty-one years, and most of them for several lots. Nearly two hundred leases of a later date were proved; and evidence of the demise of more than a thousand city lots was thus exhibited, which, with the large tracts leased for long terms of years, yet unexpired, embraced apparently every foot of the Dominie's Bowery.

The possession of the church, and their claim of ownership in fee, exclusive of any other right, from 1786 to this day, was so fully proven by oral testimony, as well as historical and documentary evidence, that no question was raised upon it at the hearing. It is sufficient to say on this head, therefore, that the defendants read in evidence several hundred conveyances in fee, executed by their corporation, from 1784 to the hearing, transferring four hundred and eighty lots, of which deeds three hundred and six were executed before the commencement of this suit, and all the lots thereby conveyed were within the Dominie's Bowery.

The demises and conveyances introduced also proved that the corporation had, from the earliest period, always treated that part of their farm which included the Dominie's Bowery, in precisely the same manner that they did the portion of their farm lying south of the Bowery, to which portion their title has never been questioned.

No difference is perceptible in their leases or conveyances of the one or the other, and there is no appearance of their ever having known any dividing line, or any distinction between them.

There is, therefore, on the part of the defendants, an unbroken current of evidence of the highest character, proving their possession of the Church Farm, claiming it as their own, from 1705 to 1846. There can be no stronger testimony of ownership in fee, than is exhibited in the records, leases and conveyances produced on this occasion. The extent of the proof and its immense force would be marvelous, in the case of a title owned by an individual. [753] Nothing but the conservative nature of the continued existence of a corporation aggregate, could have enabled the defendants to embody such a mass of testimony, extending through nearly five generations of men.

But it is contended with great earnestness that the chain of the defendant's long possession was disturbed and broken in 1784, 5; and that the breach destroys the force of their plea.

Without entering upon a minute detail of the testimony relative to the occupancy of Cornelius Bogardus, in 1784, and the year or two following, it will suffice to state the result in brief terms. The lot upon which he lived, was, before the Revolution, possessed under a lease from the church for twenty-one years, which expired in 1782, and the occupant died about the time of the peace. This lot was taken by the city to enlarge Chambers street, before 1799. John, the son of Cornelius, is shown to have lived on some of the lots in 1784 and 1785. In the first instance, he was on a lot leased by the church in 1761, for twenty-one years, and then, in 1782, for fourteen years to Christopher Smith, and which, in 1788, the church conveyed in fee to W. Alexander. His next move was into a house vacated just before by an under tenant of the church, the lease not having expired, and from which John Bogardus was turned out by the church, in 1786, and the lot by them conveyed to James Ryker in fee, in 1789.

After this, John Bogardus lived on two or three different lots for short periods, all of which had been previously rented by the church for various terms; and as his father left the city in 1786, and there is no pretence that he held under his father after that time, it is needless to trace his migrations.

The testimony as to the gravel pit is unimportant, for it is clear that it was not on the Church Farm or the Dominie's Bowery.

As to the persons put in possession by Cornelius Bogardus, after the peace of 1783, they are five or six in number, and their possessions appear to have been in what was then a mere suburb of the city, at and about Chambers street; and, so far as the locations were designated, it is shown that a part of the lots thus taken were, or had been, under leases from the church, in which the tenure continued, and all are shown to have been, very soon after, in their [754] undisputed possession. A *possession-house and fence* were erected by one of the Bogarduses, toward what is now

Hudson square, which, it appears, brought matters to a crisis; some violence ensued, and the possessor was put out by summary legal process.

The defendants produced from the files of the supreme court, the record of a conviction on the 27th of June, 1786, in a forcible entry and detainer, prosecuted by John Keating against Cornelius Bogardus, tried before the chief justice. The premises were in the west ward, and evidently a part of those demised to Keating, in 1768. From the same files were produced two records of judgments in trespass on lands, in favor of Keating, one against Bogardus, and the other against Malcolm; the latter, after a trial before the chief justice, on which the jury gave £90 damages, and the other on a confession after issue joined, given after Malcolm's trial? These records undoubtedly contain the judgment of the law, on the attempts of Bogardus to intrude into the possession of the Church Farm.

This was in 1786, and with it apparently terminated all possession, or color of possession, of any part of the premises, by the complainant's ancestors.

The whole subject of this possession is, in a legal view, quite insignificant, and it effected no change in the rights of the parties. On the one side was this corporation, having for eighty years been in the sole possession of the farm by their tenants, and thereby, if not by the Queen's grant, having acquired a perfect title against all the world. The advance of the city had converted the extreme south part of the Dominie's Bowery into city lots. The part thus laid out was, doubtless, as in the suburbs of our growing cities of the present day, in part actually occupied by tenants, and a greater part lying waste in uninclosed commons. The possession of the latter, it is hardly necessary to say, continued in the church, as much as that of the lots actually inhabited. The war, and the long occupation of the city by an army hostile to a great part of the citizens, unquestionably aggravated the waste, and destroyed the inclosures of the Church Farm. When the city was evacuated, in the fall of 1783, and the state government resumed its [755] sway, Cornelius Bogardus, probably believing he had some claim to this farm, availed himself of the confusion, and the relaxation of civil authority consequent upon the change of government, to effect a lodgment upon the debatable portion of the farm, which was at the moment neither city nor county. In the multitude of their leases, and still more in the uncertain position in which the Church of England parishes were placed by the new order of things, this lodgment was, in its humble and unobtrusive way, of two or three years duration. And it is possible that the popular enmity then entertained against the church, as a seeming branch and portion of the expelled regal prerogative, weakened the arm of justice, and for a time deterred the corporation from invoking its aid.

However this may be, the possession of Cornelius Bogardus, was not such an entry as to disturb or turn the current of the legal possession of the church. His individual entry was that of an intrudor, and the entries of John were clearly as a tenant under the church. A landlord does not lose his possession by a tenant's yielding the same to an adverse claimant. And the result of the attempt, terminating in their dispossession, without an effort for more than forty years, to recover the land, is conclusive to show that the entry was a trespass, and not a legal or rightful entry upon lands. The rule of law, as established for two hundred years, is that an entry shall not be deemed sufficient or valid as a claim, unless an action be commenced thereon within one year after the making of such entry, and within twenty years from the time when the right to make such entry descended or accrued. This rule is a part of our revised statutes. (2 R. S. 293, § 7.)

It is also the law, and has been made a part of our statutes, that the occupation of lands shall be deemed to have been under, and in subordination to the legal title, unless an adverse possession of twenty years is shown.

In this instance there was a legal title, and over a century's possession, in the corporation of Trinity Church and its grantors; and except the proof be distinct, that the Bogarduses did not enter into the lands held by the tenants of [756] the church, and that they did hold adversely for twenty years, their entry must be deemed to have been under the title of the church.

No such adverse holding is claimed for them, and their entry was clearly unavailing in respect of the title.

But further, the claim now is that Cornelius Bogardus entered as a tenant in common only. So far from any such inference being deducible from the complainant's testimony, it shows an entry in severalty, claiming it for himself and the other heirs of Anneke Jans.

Indeed the whole testimony on this point, as introduced, showing, if any thing, a hostile entry and claim, excluding any right of the church, is directly in the face of the complainant's bill, which asserts throughout that the defendants have been in possession, without interruption, from 1705 to the time it was filed, and makes no issue whatever upon that fact. The only approach to such a point in the bill is the equivocal expression applied to the last Cornelius Bogardus, "taking certain of the esplees and profits," which relates to another and negative allegation in the plea, which is yet to be considered.

The negative averments in the third subdivision of the plea are: *First.* That the defendants have never paid or accounted to the complainants or their ancestors for any rents or profits, and have never admitted that they were bound to do so, either in law or equity. *Second.* That the defendants never held or possessed the lands in question, or the rents and profits, in common or undivided with, or as trustee of the complainants or their ancestors, and have never admitted that the latter had any estate, share or interest in the lands, or the rents and profits thereof.

From the nature of these allegations the principal burden of proof is upon the complainants. (2 Daniell's Ch. Prac. 224, 225, 1st. ed.) They assert; the defendant's deny the charge. The matters, if they exist, are peculiarly within the knowledge of the complainants. They are positive facts. All the defendants are bound to do is to raise a presumption from their acts in respect of the property, its use and disposal, that no such facts exist; and the presumption must prevail unless met and overcome by proof on the other side. (See 1 Greenleaf's Ev. § 74.) [757]

For the whole period to which the memory of aged men extended, the defendants did prove distinctly these negative allegations. From 1784 to this day there has been no such payment, accounting admission of right, or holding in common. As to the period anterior to living memory they raise a violent presumption to the same effect, by their leases, reserving the whole rents and profits to themselves, and demising the whole premises.

On the other hand, there is not a scintilla of evidence in favor of the complainants, on either of these propositions.

The charge in the bill as to "taking certain of the esplees and profits" is traversed by the plea. The proof as to the occupation and receipt of rents by Cornelius Bogardus in 1784, 5, as I have already observed, was that of a hostile

and tortious entry upon the possession of an owner holding in fee, and not the entry of a tenant in common. The defendants' title was absolute in 1784, even if Queen Anne had no title when her grant was made; (*Clapp* v. *Bromagham*, 9 Cowen, 530, before cited;) and if Cornelius Bogardus than took any "esplees" he was a trespasser.

An objection to the title and claim of the church was made on the ground, that by the act of June 27, 1704, confirming the charter of the church, its clear income from lands was restricted to £500 a year, and the income from the church farm before the Revolution exceeded that limit. This was urged both as an obstacle to the corporation's holding adversely lands producing an excess over their legal income, and as showing that the surplus beyond £500 was an accumulated fund in the hands of the church, which they had no right to retain, and which, as trustees, they are bound to account for to the complainants.

On the other hand, the defendants say the act of 1704 was repealed by the legislature by the law relative to the church, passed April 17th, 1784. (1 Jones and Varick's laws, 128.) The act of 1704 is undoubtedly repealed in ex- [785] press terms by the act of 1784. Whether the last section of the latter still leaves the church subject to any of the restrictions imposed by the former, it is unnecessary to decide; for there are two short and conclusive answers to the objection, without reference to the repeal of the limitation. First, the church acquired the title to the King's Farm by the letters patent in 1705, when the whole farm was not worth as much as one city lot of twenty-five by a hundred feet, in almost any part of it, would sell for at this moment. Nor is it probable that the most visionary speculator of that era expected to live to see the day when the King's Farm would yield a net income of £500 a year. In 1704 the church leased the farm for five years at £30 a year. It is undeniable, therefore, that the grant by Queen Anne was clearly within one-tenth part of the limitation imposed by the act of 1704.

Now it scarcely needs an observation to show that the accidental increase in the income of a corporation derived from its vested estates to a point beyond what its charter prescribes, cannot have the effect to divest its title in such estates, or in any portion of them. The excess of income in such a case would not belong to the grantor of the property, much less to one claiming adversely both to the grantor and to the corporation.

Secondly, if when the church acquired the title, whether it were in 1705 or at the end of sixty years from their entry under the grant, the income were in fact more than £500, no private persons could take advantage of the fact. It is a question between the corporation and the sovereign power, in which individuals have no concern, and of which they cannot avail themselves in any mode against the corporation. This was so decided in regard to this church, in *Humbert* v. *Trinity Church*, in the highest court in this state (24 Wend. 587, 604, 629); and the same objection was made and overruled in the case of *Harpending* v. *The Dutch Church*, 16 Peters, 492, 3.) And see *Vernon Society* v. *Hills*, (6 Cowen, 23.) The same point was decided in the supreme court of Pennsylvania, in *Baird* v. *The Bank of Washington*, (11 Serg. and Rawle, 418); and by the court of appeals of Virginia, in *The Banks* v. *Poitiaux*, (3 Randolph's [759] R., 136.)

The notion of a trust for the complainants, as to the supposed excess of rents beyond the corporate capacity of the church, is founded on the assumption that the complainants have made out that the church has all the while been holding the farm as a tenant in common with them. If they have succeeded in establishing the latter proposition, they need no aid from the limitation of the income of the church. Their right to relief would rest upon much higher ground. If they have failed to show the holding in common, their assumption of a trust as to the excess, is left without any foundation for its support.

The result of my investigation is, that the defendants plea is fully sustained in all its parts and propositions; and as the law of the cause has been decided in our court of last resort, it is an entire and effectual bar to the complainants suits, and their bill must be dismissed.

Before leaving the case, I will recur to one other view which was discussed on the argument. If it had been proved that Cornelius Bogardus entered lawfully and in his own right as tenant in common in 1784, and continued his possession, as is claimed by the complainants, they could not maintain their claim to the lands in question.

I have already referred to the law on this subject, (and it was the law before the King's Farm was cultivated by Europeans,) which renders such an entry unavailing for any purpose, unless it be followed up by a suit for the recovery of the land, within the prescribed period limiting such actions. But, independent of that rule of law, the complainants are doubly barred from any relief founded upon the entry of their ancestors in 1784: First, because the Church, irrespective of actual title; by their possession of the farm for seventy-eight years, claiming it as their own in fee-simple, exclusive of any other right, under a grant in writing; had acquired a valid title to the farm against all the world. It would be a waste of time to cite any of the very [760] numerous authorities which sustain this proposition.

Against such a title, the entry of Cornelius Bogardus, was of no more consequence than would have been the entry of an entire stranger to the blood of Anneke Jans. If he had succeeded in retaining his foothold, so as to have driven the church to an ejectment, they would have recovered against him inevitably, on proof of the letters patent, and their long possession and claim under the same. (*Smith* v. *Lorillard*, 10 John. 338, 339.)

Secondly. Leaving wholly out of view the possession prior to 1786; from that time to the commencement of this suit, which was forty-four years, the church have undeniably been in the actual visible possession of the premises, claiming the whole in fee, under the letters patent, exclusive of any other right, and in direct hostility to the complainants claim. This is another full and perfect bar to that claim.

In answer to these points, it is said that they do not support the plea, which relies on an unbroken possession from 1705 to 1830.

It is to be borne in mind, that the plea was adjudged to be valid in law, by the court for the correction of errors, not because it set up an adverse possession of one hundred and twenty-five years, *but because the corporation had maintained such possession for a period long enough to bar a writ of right.* (See the report of the plea, *Bogardus* v. *Trinity Church*, 4 Paige, 178, and 15 Wend. 111.) This limitation, in 1705, was sixty years. In 1788 it was reduced to twenty-five years.

The defendants, in support of their plea, are bound to prove only its substance, and to such an extent as will maintain the bar which it interposes to the suit. To illustrate this proposition, I will suppose a bill filed at this time, relative to a trust created in 1830, to which the trustee pleads, that for fifteen years last past, he has done no act, nor admitted any thing in respect of the alleged trust, and that

the complainant is barred by lapse of time, by the provisions of the revised statutes. The limitations to such suits by those statutes, is ten years; and if, on an issue taken upon such a plea, it should appear that for ten years before the suit, there had been no act or recognition respecting the alleged trust, I apprehend that the plea would be sustained beyond a doubt.

So, in this case, if the defendants have shown [761] that such a state of facts relative to this farm as is set up in the plea, continued for more than sixty years before the year 1784, and that it continued, also, for more than forty years immediately prior to 1830, it is clear, in my judgment, that they have sustained the substance of their defence, and have doubly sustained it.

In concluding, justice to the defendants requires me to state, that the delay which has occurred since the argument of the cause before me as assistant vice-chancellor, has not been owing, in the slightest degree, to any difficulty which it presented to my mind. When the argument was closed, it was made known that there was a defect of parties, arising from the death of some of the claimants. The cause necessarily stood over, to have the proper parties brought into the suit. Immediately on its being revived, the complainants counsel applied to have the decision suspended, until they could move the court for leave to introduce further testimony. When this motion was disposed of, I had ceased to be the assistant vice-chancellor, and there was no opportunity to submit the cause to me as vice-chancellor, until the close of the last January term. A long illness immediately succeeding, and an unexampled pressure of business in the court ever since, have delayed my investigation of the cause, until the last month of my official term.

And now that I have been enabled to examine it carefully, and with due reflection, I feel bound to say that a plainer case has never been presented to me as a judge. Were it not for the uncommon magnitude of the claim, the apparent sincerity and zeal of the counsel who supported it, and in fact, (of which I have been oftentimes admonished, by personal applications on their behalf,) that the descendants of Anneke Jans, at this day, are hundreds, if not thousands, in number, I should not have deemed it necessary to deliver a written judgment on deciding the cause.

A hearty dislike to clothing any eleemosynary institution with either great power or extensive patronage, and a settled conviction that the possession by a single religious corporation, of such overgrown estates as the one in [672] controversy, and the analogous instance of the Collegiate Dutch Church, is pernicious to the cause of Christianity, have disposed me to give an earnest scrutiny to the defence in this case; as, in the instance of the Dutch Church, they prompted me, in my capacity of counsel, to more zealous efforts to overthrow their title to the lands devised by Jan Haberdinck. But the law on these claims is well settled, and it must be sustained in favor of religious corporations as well as private individuals. Indeed, it would be monstrous, if, after a possession such as has been proved in this case, for a period of nearly a century and a half, open, notorious, and within sight of the temple of justice, the successive claimants, save one, being men of full age, and the courts open to them all the time, (except for seven years of war and revolution;) the title to lands were to be litigated successfully, upon a claim which has been suspended for five generations. Few titles in this country would be secure under such an administration of the law; and its adoption would lead to scenes of fraud, corruption, foul justice, and legal rapine, far worse in their consequences upon the peace, good order, and happiness of society, than external war or domestic insurrection.

The bill must be dismissed with costs.

See 4 Paige, 178, and 15 Wend. 111.

Same question is discussed and principle affirmed in *Humbert* v. *Trinity Church*, 24 Wend. 586.

A conveyance of lands by a *trustee*, professing to convey the whole and absolute title, is a good foundation for an adverse possession, and it is immaterial for that purpose whether the trustee have the requisite authority to convey or not. A possession taken under such conveyance, claiming the title and a continuance of such possession for 33 years, is as adverse to the grantor, and to every other person claiming the same title, as it is to all the rest of the world.—*Bradstreet* v. *Clark*, 12 Wend. 602..

Entry under color of title, *i. e.*, a written conveyance will support an adverse possession, however worthless the supposed title may be.—*La Frombois* v. *Jackson*, 8 Cow. 588; *Kent* v. *Harcourt*, 33 Barb. 491; *Munro* v. *Merchant*, 28 N. Y. 9.

One tenant in common claiming title to the whole under a warranty deed from a stranger, constitutes an adverse possession.—*Siglar* v. *Van Riper*, 10 Wend. 414.

Where one tenant in common conveys the whole property when in fact he only owned a portion, *held*, that the possession of his grantee was adverse to the rightful owners. —*Jackson* v. *Wheeler*, 10 John. 166; *Jackson* v. *Foster*, 12 Johns. 488; *Jackson* v. *Smith*, 13 Johns. 406; *Town* v. *Needham*, 3 Paige, 445; *Clapp* v. *Bromagham*, 9 Cow. 530.

No. 7

Humbert vs. Trinity, 24 Wendell.

Humbert and others, appellants, and The Rector, Churchwarders & Vestrymen of Trinity Church in the city of New York, respondents.

24 Wendell, 587, decided Dec. 1840.

The statute of limitations may be interposed as a bar to relief in equity on a bill filed for the settlement of boundaries between adjoining tracts of land alleged to be confused, and praying a discovery, and also for an account as between tenants in common, the same as it may be insisted on at law in an action of ejectment or of account: on the principle that where the jurisdiction of the courts is concurrent, time is as absolute a bar in one court as in the other.

Where from the face of the bill, it appears that the statute of limitations has attached, and that the complainant has failed to bring himself within any of its exceptions, the defendant may demur, and is not bound to plead the statute.

Even in cases of exclusive equitable cognizance, the statute of limitations is generally permitted to prevail in equity as well as at law, on the principle of analogy; but there are exceptions (besides those enumerated in the statute,) such as frauds, trusts, &c. in which the court exercises its discretion in permitting the defence.

A naked possession of land, unaccompanied by a claim of right, never constitutes a bar, but enures to the benefit of the true owner.

So if a man have title as tenant in common, and be in possession, he is presumed to hold for himself and his co-tenants; but such presumption may be rebutted by proof of acts or declarations, indicating an intention to exclude his co-tenants, such as a disavowal of his holding as a tenant in common; and if he in fact keeps out his con-tenants, such acts and declarations constitute an ouster, and his possession from that time becomes adverse within the meaning of the statute.

Neither fraud in obtaining or continuing the possession or knowledge on the part of the tenant, that his claim is unfounded, wrongful and fraudulent, will excuse the negligence of the owner in not bringing his action within the prescribed period; or will his ignorance of the injury, until the statute has attached, excuse him, though such injury was fraudulently concealed by the contrivance of the wrongdoer.

A possession to be adverse, must be inconsistent with the title of the claimant who is out of possession; it must be accompained with a claim of title, exclusive of the rights of all others; and must be definite, notorious, and continued for the period of 20 years.

Where there is an actual occupation of premises, an oral claim is sufficient to sustain the defence of adverse possession; it is only where a constructive adverse possession is relied upon, that the claim must be founded on color of title by deed or other documental semblance of right.*

Appeal from chancery. The appellants, in June, 1834, filed their bill before the vice chancellor of the first circuit, to settle the boundaries of certain lands in the city of New York, owned respectively by the appellants and the respondents, alleged to adjoin each other; and also to take an account between them of certain other lands alleged to be held by the parties as tenants in common. The appellants state in their bill that Anneke Jans Bogardus, their ancestor, being seized of two tracts of land in the city of New-York, one called the Dominie's Hook, containing about 130 acres of land, and the other the Dominie's Bowery, containing about 62 acres, on or about 29th January, 1663, made her last will and testament, whereby she devised to her children and grandchildren all her real estate, and died in the latter part of the same year; that the appellants are the lineal descendants of Anneke Jans Bogardus, and heirs at law in the line of descent from William Bogardus and Sarah Roeloff or Roeloffson, two of the children and devises of Anneke Jans Bogardus, and that there are a large number of persons besides themselves standing in the relation of descendants of Anneke Jans Bogardus, who are entitled to shares and portions of the real estate devised by her, but that they are unable to give a complete list or schedule of her living descendants, and that the bill is filed in behalf of themselves and such others of her legal descendants as shall come in and contribute to the expenses of the suit. They then allege, that in November, 1705, the defendants obtained a grant from Edward Lord Cornbury, then governor of the province of New-York, of a tract of land in the city of New-York, called successively the Duke's farm, the King's farm and the Queen's farm, and of a certain other tract called the Queen's garden; the first being described as bounded on the east partly by Broadway, partly by the common and partly by the swamp, and on the west, by Hudson's river; and the second tract being described as situate on the south side of the church yard of Trinity Church, and as fronting to Broadway on the east, and extending to low water mark upon Hudson's river on the west. They allege that the corporation of Trinity Church, at the time of applying for the above grant, were fully aware and knew that the property contained in the grant did not embrace any part of the Dominie's Hook and Dominie's Bowery, but that in their petition for the grant they purposely and fraudulently left the northern boundary of the premises to be covered by the grant undescribed and unfixed, to the end and with the intent to avail themselves of that circumstance afterwards for extending their occupancy, under color of such grant, to other lands not properly included therein, but of which in the circumstances of the times they might be able to obtain some kind of possession, and thus if possible to make title by occupancy and lapse of time against the owners of the lands so to be wrongfully occupied as aforesaid. They charge that any possession which the corporation may at any period have taken or held of the Hook and Bowery (except so far as legalized by a certain conveyance obtained by them from one Cornelius Bogardus, as afterwards more particularly set out) was taken and held under color or pretence of Governor Cornbury's grant, but with full knowledge that the same was not thereby authorized. They allege that at the time of Governor Cornbury's grant, the tracts called the Hook and Bowery were in the actual seizin and possession of the Bogardus family or some of them, under claim of full legal title and ownership to every part thereof, and that from that period to about the year 1785, various members of the family were in the actual use and enjoyment of different parts of the property under claim of title to the whole in behalf of themselves and their co-heirs. They then allege, that prior to the revolutionary war, Trinity Church commenced making encroachments upon the Hook and Bowery, by taking possession of portions thereof in pursuance of their original design, and resorted to various means for that purpose, particularly alluded to in the opin-

*Decided 24th December, 1840.

ion of Mr. Justice Cowen, delivered in this cause.) That this system of aggression was continued until 1785, when the corporation induced one Cornelius Bogardus, (who before and since the Revolutionary War was in possession of part of the Bowery, claiming title to it and the Hook, for himself and his co-heirs,) to sell his birth-right in the family estates for £700, and he accordingly conveyed to the corporation all his individual share in the two tracts called the Dominie's Hook and the Dominie's Bowery; that on receiving such conveyance the corporation were let into the general and unrestrained possession of large portions of the Bogardus lands, and thereby became seized and possessed of the lands as tenants in common with all such rightful heirs and owners thereof, who had not parted with their undivided interests in the same; and in this manner and relation continued to occupy the lands from 1785 until the filing of the bill in 1834. (For a further detail of the matters set forth in the bill, the opinion of Mr. Justice Cowen is again referred to.)

To this bill the respondents **demurred:** 1. Because the parcels of land, portions of the Hook and Bowery alleged to be in their possession are not set forth; 2. That the complainants do not set forth the share of the lands to which they claim to be entitled to; 3. That the complainants show no title in equity to call upon the defendants touching the matters set forth in the bill; that it is not pretended that the complainants or their ancestors have been in possession at any time since 1785; 4. That it is not shewn that any action at law has been brought by the complainants, or that any impediment exists to such action; 5. That the bill is defective for want of necessary parties, apparent from the bill itself; and 6. That the bill does not present a case entitling the complainants to discovery or relief.

The cause was brought to a hearing before the Hon. William T. McCoun, vice chancellor of the first circuit, who made an order allowing the demurrer, but giving leave to the complainants to amend their bill, by showing what lands claimed by them are in the possession of the defendants; how the complainants are entitled to the same, whether by descent or otherwise, and setting forth their respective shares and interests therein. From this decree the complainants below appealed to the Chancellor, who on the 28th May, 1838, affirmed the decree allowing the demurrer, and dismissed the bill. See the opinion of the chancellor, 7 Paige, 195. From the decree of the chancellor, the complainants below appealed to this court, where the cause was argued by

H. G. Warner & G. Wood, for the appellants.

B. F. Butler & D. B. Ogden, for the respondents.

Points on the part of the appellants:

I. The complainants are entitled to relief under two general heads of equity: 1st. To settle and adjust the boundaries which have been fraudulently confused and encroached upon by the defendants, their tenants in common, who own in severalty the adjacent premises, and whose duty it was, as such tenants in common and adjacent owners in severalty, to preserve the boundaries and landmarks distinct. Rouse v. Barker, 3 Bro. P. C. 180; Kiresby v. Farren, 2 Ves. 414; Norris v. Leneve, 3 Atk. 83; Acton v. Lord Exeter, 6 Ves. 293; 1 Story's Eq. Jurisp. 574. 2d. To have an account against the defendants as their tenants in common of rents and profits.

II. It does not appear by the bill, so as to warrant a demurrer, that the complainants are barred of their claim by lapse of time, because, 1st. They have been tenants in common with the defendants since 1785; and the possession of one tenant in common is in law the possession of the other. 2d. The facts and circumstances set forth in the bill are such as to disavow the presumption of a conveyance from the complainants to the defendants of their undivided interests, or of an ouster and adverse possession, viz: the circumstances of fraud set forth in the bill; the repeated setting up by the defendants of their title under Bogardus; the legal disability of the defendants to acquire their interest by purchase, and a fortiori to acquire them by operation of law. Livingston v. Peru Iron Co., 9 Wendell, 511. Jackson v. Hendricks, 7 id. 152. Jackson v. Frost, 5 Cowen, 349.

III. The premises claimed are, under the circumstances, sufficiently described in the bill of complaint, because, 1st. The ancient description is fully given, the title being an ancient one. 2d. The reason for not giving a more full description according to their present situation, is sufficiently accounted for; the difficulty being caused by the acts of the defendants themselves, whose duty it was to preserve the landmarks. 3d. Less particularity in pleading is required in equity. Spurrier v. Fitzgerald, 6 Vesey, 556. Equity Draftsman, 323.

IV. The complainants are entitled to a discovery from the defendants of the boundaries of the premises claimed, as incident to the equitable relief they are entitled to, and for the reasons stated in the first and third points.

V. The pedigree of the complainants, connecting them with their ancestor, from whom their ancient title was derived, is sufficiently set forth, because, 1st. Generality of pleading is allowable in stating ancient facts, especially in a court of equity. 2d. The word heir involves matters of fact as well as law, and it is sufficient to allege that a party is heir of another, without detailing the circumstances of relationship. 2 Chit. Plead. 208. 2 Sanud. 7, n. 4. 3d. The law of primogeniture did not prevail and govern the descents among the Dutch inhabitants of the colony of New-York, in respect to their inheritances, upon the introduction of the English government or of English law.

VI. An action at law was not necessary in the present case previous to exhibiting the bill.

VII. The parties being very numerous, as alleged in the bill, and having a common right, it is sufficient for some to sue as complainants on behalf of themselves and others.

VIII. Even if it were true that some of the plaintiffs had no title, that is not fatal in a bill of this kind, which the law allows for convenience sake, and will not suffer to be defeated by an objection of misjoinder, only applicable to cases of joint demands.

Points on the part of the respondents:

I. It appears on the face of the bill, that the defendants have been in the exclusive possession of the premises in question from the year 1785, to the filing of the bill in this cause in June, 1834, being nearly 50 years, claiming them during the whole time as their own. This length of possession is a bar to the claim set up in the bill. Cases cited by the chancellor, in his opinion in this case, Bogardus v. Trinity Church, 4 Paige's Ch. R. 178; S. C. on appeal, 15 Wendell, 111. Cholmondeley v. Clinton, 2 Jac. & Walk. 1, 192, S. C. 1 Turn. & Russ. 107. Mitf. Plead. 4th ed. 107, 108, 163, and cases there cited. McElwain v. Willis, 9 Wendell, 548, 561. Hovenden v. Annesly, 2 Sch. & Lef. 636. Livingston v. Livingston, 4 Johns. Ch. R. 299. Story's Eq. Plead. 389.

11. The bill shows no sufficient legal title in the complainants to the lands in question, or any part of them. Mitf. Plead. 41, 42, 154, and cases there cited. Edwards v. Edwards, 1 Jacob's R. 335. King of Spain v. Marhado, 4 Russ.

R. 225. Cliff v. Platelt, id. 242. Makepeace v. Haythorne, id. 244.

111. The bill is not sufficiently certain and particular as to the lands in possession of the defendants, which the complainants claim, nor as to their respective shares or interests (if any) therein. Cases above cited. Looker v. Rolle, 3 Ves. 4. Jones v. Jones, 3 Meriv. 161. Crow v. Tyrrell, 3 Mad. 179. Moulten v. Smith, 3 Ans. 99.

After the advisement, the following opinions were delivered:

By Cowen, J. Both the learned officers who considered this case in **the court below agreed that the bill failed to show that any of the complainants, or those under whom they claim, had been in actual possession of the premises in question since 1785. On the contrary, they considered it as admitting possession in the defendants since that time. But they differed as to the character of this possession, the vice chancellor holding that it was not adverse within the meaning of the statute of limitations, the chancellor holding that it was.**

The bill is in the two fold nature of an action of ejectment and an action of account. It is brought to settle boundaries, and to take an account between alleged tenants in common. The legal bar to the action of ejectment is fixed by the statue at twenty years, and to an action of account at six years. The two claims being not exclusively of an equitable character, but capable of enforcement either in a court of law or equity at the election of the complainants, the court of chancery and this court are bound, in passing judgment, to apply the same principles in sustaining the complainants' claims, in allowing bars to their remedy, and receiving answers to avoid or overcome such bars, as would prevail in an action of ejectment or of account itself. The statutes of limitation do not mention (at least, the earlier statutes did not mention) bills in equity as the subject of a bar by lapse of time; but when the statutes came fully to be considered by the court of chancery, they were adopted, and the same operation given to them there, in respect to all legal claims, as if the statutes had expressly mentioned such claims. In all matters wherein the jurisdiction of chancery and the common law courts was concurrent, the statutes of limitation were adopted in chancery, on two grounds, first on the ground that equity follows the law; and secondly, that where a thing is forbidden by law in one form, it shall not be done in another. It was found in matter of account, for instance, between joint tenants or tenants in common, that the statute limiting the action to six years would be of little avail, if it could be evaded by filing a bill in chancery. **In all such cases of concurrent jurisdiction, therefore, which are numerous, the statutes have uniformly, with the exception of a few early and ill considered cases,** been received implicitly by the court of chancery; and the well settled rule upon authority will allow of their being weakened by exceptions and qualifications to no greater extent than if they had in terms extended to the court of chancery.

So much is premised, without any intention at this stage of the examination to cite authorities in its support. The legal nature of the complainants' claims, and the principles on which I have, so far, supposed they are to be treated, were insisted upon in argument; some authorities were mentioned, but none of the doctrine was denied.

With regard to claims of exclusively equitable cognizance, the statutes of limitation are also generally received; but here chancery will sometimes exercise a discretion. The statutes have here been received on principles of analogy; exceptions, therefore, are more freely allowed, and qualifications unknown to the statutes, founded on fraud, trust and a few other grounds, have been considered as admissible.

Another rule, which is one of practice peculiar to the court of chancery, was asserted, and not denied on the argument: it is, that when the bill shows a stale demand on its face, the defendant is not bound, as at law, to plead the statute of limitations; but may set it up by a demurrer. If the complainant mean to avoid the objection in that farm by any matter which might be replied in a court of law, he must state such matter in his bill. Story's Eq. Pl. § 484, 503. In the case before us, the bill was evidently drawn with that view, and, as in forming my own opinion on this appeal, I have not thought it necessary to go much beyond the principles now mentioned, I intend to do the little more than inquire whether the pleader has been successful in showing a claim not barred by the statute of limitations. In doing so, I propose to take the bill in that aspect which looks to the settlement of boundaries. If it be barred in this aspect, the claim for an account falls with it. If not, there remains, such a tenancy in common, that the defendants would be liable to account for the rents and profits to the extent of at least six years before the bill was filed.

The complainants insist that the facts stated in their bill make out a subsisting tenancy in common, between them and the defendants; that the latter have worked a confusion of boundaries between the Duke's farm, which is their own land holden in severalty, and the common land of both parties, which are the Dominie's Hook and Dominie's Bowery, and of which the defendants have been for many years in the possession and enjoyment, receiving the rents. The complainants insist that the title to different parts of the latter, and a common possession, were acquired by the parties to this suit respectively from Anneke Jans Bogardus, in a course of devise, descent or purchase, since 1663, which course I shall assume has been traced with sufficient particularity and certainty; and adopting that aspect of the case, independently of any matter of defence, the complainants would be clearly entitled to an account, and also, I apprehend, to a decree settling boundaries. The bill would make out the possession by the defendants of adjoining lands, one parcel being their own in severalty, and the other in common between both parties; and the confusion charged upon the latter, whether arising from fraud or negligence, was a breach of trust, warranting the interposition of a court of equity, however, improper for such a court might be the ordinary conflict of boundaries between owners in severalty. I see no objection, therefore, to the principle of the bill in either aspect; and I do not stop to inquire whether the relative titles or possessions have been deduced or defined with the requisite certainty.

One answer set up by the defendants is, that, admitting the bill to be sufficiently formal in its allegations of title and possession, yet such a character is given to their possession as to take away the supposed relation of tenants in common—indeed to show that it never existed; but that, whatever possession was acquired by them was decidedly adverse, and continued for a length of time exceeding twenty years, next before the filing of the bill. If this be so, on the facts stated by it, most clearly there is an end of this controversy.

By demurring, the defendants have admitted all the material facts stated in the bill, and all the legitimate conclusions of law deducible from those facts. We must, therefore, at this stage of the cause, receive the complainants as their own historians. We must treat their history as absolutely authentic, absolutely true, and incapable of qualifica-

tion by looking into any matters of fact, however well known or verified by proceedings in other causes.

In testing a defence founded on possession, courts of justice direct their attention to the time during which it has continued, and its character. The latter respecs its notoriety, the nature of the occupation, and especially, the intention with which it is taken and continued. If it be a naked possession, not accompanied with any claim of right, it will never constitute a bar, but will enure to the advantage of the real ower. It is a possession in his right and for his benefit. **The law presumes, till the contrary be shown, that a man in possession without title intends to hold for the true owner**; in other words, that he intends to hold honestly so far as he can consistently with holding at all. So if he have a title as tenant in common, he is presumed to hold for himself and his co-tenants; and in either case, if his possession be in fact wrongful, in other words, adverse or exclusive, so as to work a statute bar, he must show this in a course of proof, or show that it is admitted by his adversary, in pleading. In the case before us the question turns on admissions in pleading; and I apprehend may be taken as narrowed down to the simple one of what character we are to ascribe to the defendants' possession from time to time as it was taken by them, in respect to its being adverse or not. That the defendants have been actually possessed of very considerable portions of the land in dispute, for a long time, and from a period prior to 1705, I shall leave to a simple review of the bill, after reminding the court, that no dispute seemed to exist between the learned counsel who argued this cause, that it was sufficiently ancient, distinct and definite, to satisfy the statute of limitations in time, in precision and in notoriety. But when we came in other respects to the character of the possession, viz. whether it was consistent with the claim of the complainants as tenants in common, or adverse, they differed widely, the counsel for the complainants insisting on the former, and the counsel for the defendants on the latter. So far as the statute of limitations may be concerned, this is the only issue we are called on to decide.

Have the defendants then uniformly, continuously, definitely and notoriously been in possession adversely to the complainants, for a period of twenty years before the bill was filed? Another form of putting the question is with what intent, quo animo, in the legal phrase, have the defendants accompanied their possession; and has that quo animo been indicated by acts calculated to exclude the complainants from all participation as tenants in common?

In 1705, the defendants obtained a grant of the Duke's farm, on their own petition. The bill states that they artfully presented to the government, in their petition, such a description of the farm as left the northern boundary ambiguous. **This northern boundary was the dividing line between the Duke's farm and the land of the complainants, and should have been so accurately marked and described as to render the separation entirely obvious to the adjoining proprietors.** But it is said the defendants had already formed the intention to possess themselves of the Bogardus lands as being part of the Duke's farm, and had introduced the ambiguity in order to subserve that intention. **Not being definitely limited on the north, this circumstance opened the door for pretending that their grant of the Duke's farm comprehended the Bogardus lands; and it was for the fraudulent purpose of following out such pretension by actual encroachments, that they had sought to procure the equivocal grant.** It is said they succeeded in imposing upon the government, and that their purpose soon after became quite manifest by their conduct. Taking up the story, at this stage, more nearly in the language of the bill, we are told that but a small part of the Bogardus lands were improved or enclosed. **That the defendants proceeded to act on their original policy, by making considerable encroachments prior to the American revolution. Their course was to take such possessions from time to time as they believed would eventually ripen into a title. In this way they made a variety of lodgments, though resisted by the Bogardus heirs. The defendants persevered with intent to deprive those heirs of their birthright. Many of them were constrained to abandon their possessions by the defendants' habitual use of menaces, the frequent exercise of actual violence, such as pulling down fences and improvements, burning them riotously, threatening suits and imprisonment, and occasionally resorting to the temptation of pecuniary offers. They boasted of their wealth and power, and declared that they would never desist from their purpose of getting full possession.** In this way, the more timid occupants were induced either to quit their possessions, or take title under the defendants.

This brings us to the year 1785, down to which time, notwithstanding the disadvantages under which the Bogardus, heirs labored, several among them, including one Cornelius Bogardus, kept possession of large portions of their land, claiming title for themselves and their co-heirs. The bill characterizes these encroachments at every step as wrongful, the defendants being fully aware that they were acting illegally, and having in view their original design.

So far there is no dispute that they proceded with an adverse claim of title, and took such a possession as would have constituted a bar by the statute of limitations, had it continued for twenty years, and not been qualified with the imputed scienter of wrong and fraud.

This brings us to the deed from Cornelius Bogardus to the defendants, which is much relied on as changing the relation of the parties from that of enemies to friends—from that of adverse holders to tenants in common. **Cornelius was a common proprietor of the land in dispute, and stood foremost among those descendants of Anneke Jans Bogardus, who had sturdily opposed the encroachments. He (says the bill) had tenants, and divers portions in fence, and was therefore a prominent object of persecution for years, both before and after the American revolution. His fences were prostrated in the night and burnt by numerous parties of men acting for the church, and who turned in their cattle and devoured his crops. Thus he suffered long and severely; and being poor, was successfully assailed with an offer of £700, in consideration of which he granted and conveyed to the defendants, who claim that their title under such grant is good and valid. He giving way, the defendants were let into the general and unrestrained possession of large portions of the land. The bill charges that the defendants offered the £700 by way of purchasing Cornelius' birth-right; and that taking the deed and being let into possession, they by this means became seized and possessed as tenants in common, and in this manner and relation they continued to occupy till the filing of the bill in 1834, inasmuch as no subsequent event or occurrences happened to change in that respect the character of their possession.**

The allegation, however, almost immediately follows, that the defendants' conduct has since been such in regard to that deed as to indicate the unfairness of their original design. That they have been cautious in its exhibition, refused to record it, and generally kept it in profound secrecy, affecting even to doubt its existence, fearing that the heirs might claim it as an admission of a tenancy in common.

In truth, the great reason for obtaining the deed was a pending proceeding before the legislature to question their title. They therefore obtained and exhibited it to the legislature as covering a part of the Duke's farm—in other words, their own farm. That excepting this and the production of the deed in 1807, in defending themselves against a claim by some of the Bogardus heirs, they have uniformly concealed the deed, and affected to hold the lands as if none had been received.

This part of the bill calls for more particular attention, because it is relied upon as containing averments, that the defendants, by the act of taking various possessions under the deed became tenants in common, and that they have since continued to hold as such. Therefore it seeks to infer that the adverse character of their possession was taken away. I am not disposed to deny, that had these averments stood alone, although they are not direct, yet they might be received as of the import contended for. The allegations are, that by means of the deed from, and possession under Cornelius, the defendants became tenants in common, and had held to this day in that relation. True all this is obviously stated as an inference from the naked act of taking possession under the deed, without showing what sort of a deed it was. It might on its face have negatived all idea of conveying Cornelius' common right. But perhaps the presumption would be, that both parties were dealing, and intended to deal in his undivided share as a tenant in common. That inference standing unrebutted, would I should think, be about equivalent to an independent averment that the defendants had taken and held as tenants in common with the Bogardus heirs, from the year 1785. But taken with its surrounding circumstances, the acts and intents which preceded and followed the deed, it seems to me that the inferential allegation is completely overcome. From the year 1705, down to the date of the deed, the defendants had entertained the settled design, coeval with their petition for a grant of the Duke's farm, to claim the Bogardus lands in severalty as a part of their grant. **They had prosecuted that design through the instrumentality of threats, of persecution, of riotous invasion and on some occasions in a spirit of vandal ferocity. A part of their system when these failed, was a resort to pecuniary appliances. They bought out the more obstinate inhabitants, for the very purpose of acquiring and extending adverse possession in pursuance of their general design.** With Cornelius among others, they had utterly failed of success by the more hostile means of incursion. They therefore bargained with him to leave the land, taking some sort of conveyance. But the bill alleges that so far from any intent to come in as tenants in common, it was **for the very purpose of exhibiting it to the legislature as covering a portion of the land contained in their own grant from the crown. They generally concealed it among their private archives;** and it is not said, that even when, on one occasion, they produced it in defence of an action, they claimed under it as passing a right in common. They feared that if seen, the Bogardus heirs might seek to infer that they held in common; and finally we are told that, with the two exceptions mentioned, they have uniformly concealed the deed, and affected to hold the lands in question as if none had been received. Nay, one of those very instances which are insisted on as exceptions, was an adverse claim addressed to the legislature, and the other is in itself entirely equivocal. It would be a strained and unnatural construction to suppose that in either case, they meant to admit the claim of the Bogardus heirs.

Now, although a man who may hold possession rightfully as a tenant in common, presumptively refers himself to that right, yet the contrary may be shown; and if his conduct be such as to satisfy the mind that he means to hold out his co-tenants, and he does in fact exclude them, this is an ouster: and his possession from that time becomes adverse within the meaning of the statute of limitations, equally so as if he had never any right to claim as a tenant in common. common, the defendants were necessarily tied up to hold It by no means follows, therefore, that even had the deed from Cornelius expressly mentioned his right as a tenant in in that relation. They might at any moment break the connection, by openly disavowing it; and from that time the statute of limitations would begin to run. Can there be any doubt in this case, on what is stated by the bill, that the defendants have done more; that they have not merely broken a connection in common, but that it never existed in fact; that they alway intended to claim the land in question as their own without conceding the right of participation to any other? I should think the bill leaves no room for doubt. But even should the court be of opinion that the bill has, in the mode of stating the case, left the matter equal between the parties, the rule of construction comes against the complainants, that ambiguity in the language of their pleader shall be turned against them.

The year 1785 seems to have witnessed the final reduction of the disputed territory. When Cornelius and his tenants gave way, the contest became hopeless. At any rate, the bill charges no new and distinct act of taking possession after that year, so that all the land in dispute must be taken to have been held and claimed in severalty for nearly fifty years.

But the bill seems to have been drawn on the assumption that in proportion as the defendants' encroachments were committed under a consciousness that they were depriving the Bogardus heirs of their birth-right, and in proportion as the defendants were, therefore, put to sinister expedients in the prosecution of their design, their claim to protection under the statute of limitations is weakened. The bill abounds with imputations of their knowledge that they wanted even a color of right; and every step is referred to their preconcerted design of 1705: the design of claiming the Bogardus lands as a part of their own. **In this way it cannot be denied that the bill makes out a case of strong moral transgression;** and the question thus raised is, whether a plaintiff, lying by and forbearing to bring his action till after the time in the statute of limitations shall have run against him, can excuse his negligence by the fact that the defendant knew all along he was in the wrong. If the statute is to become unavailing on the ground that the wrongdoer knows he has been withholding an acknowledged right, it is obvious that it can very rarely be used as a protection; and the forms of pleading have been entirely mistaken for centuries. It will no longer be sufficient, even in assumpsit, simply to deny that the defendant promised or that the action accrued within six years. The plea should be that he has honestly withheld the debt; at least the plaintiff may reply that the defendant withheld it under a consciousness that the delay was wrongful; and the issue will thus always be joined upon his integrity. So an action of trespass could never be barred by the lapse of six years, unless the defendant could show the trespass to have been innocent. But it is entirely obvious that none of the statutes of limitation proceed upon such ground, Whatever the character of the injury, and whether committed in good or bad faith, the statute bases itself upon time. **The civil remedy is cut off in two, four, six, twenty or twenty-five years, except it be impeded by**

certain specified disabilities, such as infancy, coverture, &c. In like manner public prosecutions even for very black crimes are barred by the lapse of three years. The statutes limiting the right of entry into land and the right of action for real estate, speak the same language and must be construed by the same rules. If the claimant have not been in possession actually or constructively within twenty years, he loses the right to his ejectment. The 2R. S. 221, 2d ed. § 5, declares, that "no action for the recovery of any lands, &c. or the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question within twenty years before the commencement of such action." The only exceptions are mentioned in § 16. If any person entitled to commence any action, &c. be at the time the title descended or accrued within the age of twenty-one years, insane, imprisoned or a married woman, such person may sue within ten years after the disability shall have ceased. These disabilities can no more be multiplied at law or in equity, when a legal right comes into question, than they can in an action of slander or assault and battery. Possession by the defendant with a claim of title for twenty years, can no more be answered by averring that he knew he was wrong, than could the bar of two years, in slander, by the known falsehood of the libel for which it is prosecuted. So long as a man is in possession of land claiming title, however wrongfully, and with whatever degree of knowledge that he has no right, so long the real owner is out of possession in a constructive as well as an actual sense. **It is of the nature of the statute of limitations when applied to civil actions, in effect, to mature a wrong into a right, by cuting off the remedy. To warrant its application in ejectment, the books require color of title, by deed or other documental semblance of right in the defendant, only when the defence is founded on a constructive adverse possession.** But neither a deed nor any equivalent muniment is necessary, where the possession is indicated by actual occupation, and any other evidence of an adverse claim exists. The muniment is but one circumstance by which to make out an adverse possession. An oral claim of exclusive title or any other circumstances by which the absolute owner of land is distinguished from the naked possessor are equally admissible, and may be equally satisfactory. It was very properly conceded, on the argument of this cause, by the councel for the appellants, that a claim of title, even under a paper altogether void and inoperative as a deed, will yet characterize a possession as adverse within the statute of limitations.

Nor can it be received as an objection, that the possession and claim of title are by the agents or tenants of a corporation incapable by law of taking lands.* It is said that the law will not do an idle thing; that by its own operation, it will not cast a title upon one not competent to take as a purchaser, any more than it will carry land by descent to an alien. The answer was properly given at the bar, that the argument confounds the acquisition of title with the cutting off a remedy. The plaintiff is barred of his action because he has been shut out of possession by an adverse claimant for 20 years. **We need only look into the bill before us to see that a corporation, though wanting the legal authority to purchase, has yet the power of actual ouster in an eminent degree, and of actually enjoying land for 20 years, several times told, claiming in fee, and excluding the real owner. Of such an owner, possession within twenty years can no more be predicated than if the wrongful claimant had been a natural person. The remedy is therefore gone. Admit that the law will cast no title on the corporation, the answer, in the words of the statute, is equally fatal: "You have been out of possession for more than twenty years, and are thus disqualified to maintain an action to recover your land against me or any other."**

But the complainants say that they and those under whom they claim, remained ignorant of their wrongs until within two years before their bill was filed. I think they show that this is highly improbable; not to say impossible. It is incompatible with the facts that the resistance of their predecessors was coeval with the open encroachments of the defendants, and that both were continued, so that the defendants never held their possession quietly for twenty years together, till after 1785. It is enough, however, to say that ignorance of a plaintiff's wrong, is not among the disabilities enumerated by the statute of limitations, nor has it, when considered in the abstract, ever been regarded either at law or in equity, as coming within the principle of the enumeration. The question was recently considered by the court of king's bench, in Granger v. George, 5 Barn. & Cress. 149, 7 Dowl. & Ryl. 729, S. C., and the very point of ignorance ruled against the plaintiff. How it would be regarded on a merely equitable claim, may be inferred from what was said by Sir Thomas Plumer, in Cholmondely v. Clinton, 2 Jac. & Walk. 139, 142. He denies that it could be listened to at law, and infers that it is equally inadmissible in equity.

This ignorance, however, is not suffered to stand in the abstract. Another ground taken by the bill is, that the system of wrongful intrusion imputed to the defendants, was concocted and pursued with a fraudulent intent; and it is averted that their scheme was so secret and conducted with so much art for a period of one hundred and thirty years, that none of the Bogardus heirs discovered the original design till within a very short time previous to the filing of the bill. But the answer comes again: the complainants are before us for the purpose of enforcing a legal claim. The statute has told us in so many words what alone will save the right of entry or action against the lapse of the twenty years. These are infancy, coverture and other disabilities or impediments expressly named. Still other impediments may have been equally worthy of enumeration; and that the defendant committed the wrong with a secret and impenetrable design to avail himself of the statute of limitations, and succeeded in covering up his fraud till the time had expired, may have been one of them. But the reasons are obvious, and authorities quite uniform against going beyond the express enumeration in the statute. Among other qualifications sought to be engrafted upon it, fraud has been expressly repudiated by several cases. The question has been before the supreme court in three successive instances. The first was in Troup v. Smith's Ex'rs, 20 Johns. R. 33. The case was decided in 1882. After a full argument, presenting the English and American authorities up to that time, Chief Justice Spencer went over them, and concluded the unanimous opinion of the court in these words: "We wish to be understood as deciding the cause on the ground, that whether there was a fraudulent concealment or not, so as to prevent the plaintiff's discovering the fraud until within six years before the commencement of this suit, sitting as a court of law and bound by the express provisions of the statute, we could not notice the fraud so as to take the case out of the statute." The same point was again resolved by the same court in 1830, Leonard v. Pitney, 5 Wendell, 30. And still again in 1837, Allen v. Mille, 17 id. 202. All these were cases where the injury was committed fraudulently, and kept so veiled that no remedy

could be had till the statute had run. In the two first cases the mischief was not even felt till after the six years had elapsed. All the cases were fully argued and much considered by the supreme court, who united in sustaining the rule laid down by Chief Justice Spencer in the first. The last case repeats and adopts his very words. The same thing was held in Callis v. Waddy, 2 Munf. 511, and Hamilton v. Shepperd, 3 Murph. 115.

Thus stands the matter at law. I will not go over the cases cited by the learned chancellor to this point, which I perceive relate to questions not directly cognizable at law, but which are more properly such as are dealt with on equitable grounds. I will merely cite a passage or two from what Lord Redesdale said in Cholmondely v. Clinton, after that cause had reached the house of lords. It is reported in the 4th of Bligh's Parl. Cas. old series,) 1 to 125. At p. 119, Lord Redesdale speaks of the statute limiting an ejectment to twenty years. He says: "I take it to be a positive law which ought to bind all courts; and, for that reason, I have taken the liberty, in another place, to say that I considered it not simply a rule adopted by courts of equity by analogy to what had been done in Courts of law under the statute, but that it was a proceeding in obedience to the statute, and that the framers of that statute must have meant that courts of equity should adopt that rule of proceeding." This, it appears to me, is substantially giving up the right to qualify the statute by cases not provided in itself, even while we stand exclusively on equitable ground. It is not necessary to go as far here, where the right in question is in every sense the same as if we were engaged in trying an action of ejectment or account. Here we must be governed by the law and nothing but the law; and we have seen what that is. To other proofs that we are bound by the law, although sitting in a court of equity on this very question of fraud, may be added the remarks of a learned judge in our neighboring state of North Carolina. The question before the court was, whether the statute ran against an undetected fraud in the sale of a land warrant; and the supposed rule of equity had been pressed upon the court. Henderson J. replied that this rule related to a pure equity matter of such action. He adds: "But if it were on a subject matter of such action. He adds: "But if it were on a subject matter cognizable at law, and within the cases provided for in the act of limitations, that act is as positive a bar in a court of equity as in a court of law." Hamilton v. Shepperd, 3 Murph. 115, 118. Again, in Bell v. Beeman, id. 273, 278, he says, "Equity follows the law, and the rights of the parties shall be the same in both courts. They shall not be changed by the complainant's choosing his forum."

Such is the settled rule in respect to the shorter statutes of limitation. If a replication of fraud and concealment will not be received even there, as an answer to the delay, there is still less reason for allowing it to overcome the defence of adverse possession; for, however secret the design which led to it, one essential quality of such a possession is, in general, distinctness and notoriety. At any rate such was the possession imputed to the defendants. To this may be added the greater lapse of time during which an adverse possession must continue in order to continue a bar. An actual ouster and levying a fine would have barred the complainants in five years. And no one can doubt that a prosecution of the like design by open and notorious possessions for nearly half a century, some of which were obtained by riots and conflagration, would as effectually put owners upon their guard, as a fine with proclamations; yet the latter, at the time when these contested possessions were taken, would have worked a final bar after the lapse of five years only. Such continued to be the law till abolished by the revised statutes of 1830. 2 R. S. 265, 2d ed. § 24. Nor did those statutes cut off the wrongful holder of land from the right to a limitation equally summary in another mode. They substituted the more fair and just method of a notice, to litigate which if not obeyed within a very short time by any one claiming title, and having the notice served upon him, comes with all the force of direct res judicata, and estops him forever. 2 R. S. 238, 2d ed. pt. 3, ch. 5, tit. 2. 3 id. appendix, p. 706, note of revisers.

I mention these things to show with how much anxiety the law extends its protection over the actual occupant. Statutes limiting real actions generally operate in favor of the men who cultivate the soil, or inhabit the dwelling houses of the country; and cannot discriminate between the rich and the poor, the powerful and the weak, the wise and the ignorant. Looking at their tendency to encourage men not only in the pursuits of agriculture, but every great interest of the nation, an argument of policy arises for their equal and steady application, even more strong than of statutes which passed to limit personal actions. All, however, were framed on the most salutary principles of general policy. They have, with great propriety, been termed statutes of repose. They fix a term broadly marked and easy of proof, at which litigation is arrested; beyond which every man is enabled to pronounce that his possessions are no longer open to disturbance. The great object, no doubt, was to interpose the presumption arising from delay against the loss of evidence and the fictions of perjury; but in this view alone neither open wrong nor established fraud could be admitted as an exception without striking at the principle itself; neither can be received without proof, and that would bring back the very danger which the statutes were intended to obviate. An admission of the fraud in the course of pleading, as in the case at bar, forms no exception. A man circulates a secret slander, by which his neighbor, after the lapse of two years, for the first time finds his character to have been ruined. The secrecy was for the fraudulent purpose of evading the statute limit of the two years. He sues. The slandered pleads the statute; and the plaintiff replies the fraudulent concealment, and his consequent ignorance of the injury. No lawyer would doubt that the defendant might demur, thereby admitting the fraud. He has but one of two courses; if he be driven from his demurrer, he must take issue on the fraud, and put the plaintiff to his proof. So in the case at bar, and in every case, by such a circle of pleading, if allowed, the defendant is exposed to that very danger from fabricated evidence against which it was the great purpose of the statute to protect him. I have drawn an illustration from a very short statute, because it is evident, that the policy becomes more obvious in proportion as the lapse of time is enlarged. The magnitude of the danger may be heightened by the value to which the property at stake has arisen, the multitude of excited claimants, clamorous of their supposed wrongs, diligent in searching for means of attack and detecting flaws in the defence. In the very case before us, the protection of the statute is sought to be withdrawn from the defendants, on the ground that they committed a fraud some four full generations before the bill was filed. We are aksed to throw both parties back upon the litigation of a documental title which looks for its origin to the Dutch dynasty before the year 1663; and which claims to have reached the complainants mainly in a course of descent from that time. This, it is conceded, must be done, if at all, not merely through

evidence obscured by the ordinary mists of tradition in a settled government, and under a well regulated system of conveyancing; but evidence which comes to us through the mutations of empire, the fury of revolutions, repeated changes in the law of descents, in the law of common assurances, and great defects at all times in the method of perpetuating the evidence of their existence.

There is no case either in England or this state, wherein fraud has been received as an answer to any statute of limitation, when the statute was interposed against a mere legal claim. Livingston v. The Peru Iron Company, 9 Wendell, 511, is the only case relied on as containing an intimation that it may be received for such a purpose; and that was a case in which the statute of limitations was not in question. **The defendant claimed to be in adverse possession of land under a deed from John Livingston; and denied, therefore, that while such possession continued, Livingston could convey the land to the complainant. The defendant had no actual possession of a single foot of the land, and his deed was shown to be void for two reasons; first, because the agent of John Livingston had no power to give it; and secondly, because, if he had, it was obtained fraudulently.** Savage, Ch. J. and this court held therefore, that no such constructive adverse possession in the defendant had been made out as disqualified Livingston to part with his title. **In other words, a void deed would not raise a constructive adverse possession within the meaning of the statute concerning champerty and maintenance.** The transaction was recent, and the possession founded not upon actual occupation, but solely on a deed which was shown to be void. The statute of maintenance has come to be considered with a good deal of disfavor. In the previous case of Jackson, ex. dem. Hendricks, v. Andrews, 7 Wendell, 152, even actual possession claiming under a void deed was denied to be adverse for the purpose of disqualifying the real owner to convey, though clearly since the decision of this court in La Frombois v. Jackson, ex. dem. Smith, 8 Cowen, 589, that would not be so of a deed invoked to make out a possession within the statute of limitations. For this purpose, I understand that case to hold it good, in so many words, although void both in respect to a want of title in the grantor and on its face. In short, if the right be claimed under a void deed, it is not therefore less available than a claim without deed, which is yet admitted to be a bar. The question is on the quo animo; the intent; not, I take it, as was suggested in Livingston v. The Peru Iron Company, the intent to claim honestly; but the intent to claim at all, right or wrong, with or without knowledge that another has title. Tha statute in terms bars the man who has been out of possession for twenty years, and no one is the less out of possession, because the man who is in may know that his possession is tortious. After such a length of time it would be dangerous to open an inquiry upon the bona fides of the defendant's claim. No English or American case was cited as allowing any such inquiry, and there are some with which expressly deny it. It has been denied in North Carolina, where the limitation is only seven years. Den, ex dem. Reddick, v. Leggat, 3 Murph. 539. **In that case the defendant, as the plaintiff alleged, had fraudulently obtained a grant from the state, which he knew covered a part of the plaintiff's previous grant; and held seven years' possession under it. The jury were charged at nisi prius, that no paper writing founded in fraud could operate as color of title in favor of him who was party to the fraud; and the question of such fraud was left to them on the evidence. They finding for the plaintiff, a new trial was granted.** The court remarked that the act of limitation which had passed in 1715 was general, and not confined to possessors who were ignorant of any other title; and the judge delivering their opinion adds, "I would say that the law so construed is politic and wise. On the one hand it may be said that no mala fide possessor should acquire a right, no matter how long his possession may have continued. Yet, as parol evidence must be gone into for the purpose of proving the mala fides, and it being a thing dependent on knowledge in the possessor, a thing which may be drawn upon him by perjury without a possibility of contradiction, the object of passing the act would be frustrated. It would tend to render titles insecure. **For us as expounders of the law, it is sufficient, to say that there is no such exception in the words of the act."** The ideas thus put forward are not new. They were advanced in the case of Stowel v. Lord Zouch, Plowd. Comm. 371, in the reign of Queen Elizabeth, and this is moreover a case which shows with how much strictness even a short statute of limitations in favor of possession should be confined to the words of saving or exception. A statute had declared that a fine should operate as a bar to all strangers, saving to all persons and their heirs such right as they had, so that they pursued it by action or entry within five years next after proclamations made. It was held that not even infants or femes covert were excepted, but all limited to the five years, because the statute did not except them in words. It is added, "Whosoever considers that this act was made for the general tranquility and quiet of inheritances throughout the realm, which are more to be favored than the non-age of an infant in a case which rarely happens, will not think this a hard or rigid construction; and although sometimes a case happens for which there is no remedy, yet that does by no means impeach the reasonableness or justice of the law, seeing the great number of people who are provided for by it." It is then shown that there might be several successive infancies, and added, "Then the right would come to be tried when it is out of the memory of any man living, and yet in such a dark case a jury would be under the necessity of giving a verdict; and such darkness and ignorance would be the means of introducing perjury and many other mischiefs which the makers of the act intended to prevent by removing the cause of them, viz. by limiting a certain time, which they did not intend should be exceeded, although some particular persons might suffer by it." See also Maddock v. Bond, 1 Irish T. R. 332, 340. Even while treating of an equity, when Cholmondely v. Clinton came to a second hearing at the rolls, 2 Jac. & Walk. 155, Sir Thomas Plumer seems to have used language equally strong. He says (speaking of a bar in 20 years by adverse possession,) **"The question is never a question as to the title belonging to the plaintiff or defendant; time shuts out the inquiry into title, except only to ascertain that the possession has been de facto adverse to the claimant; whether amounting strictly to a disseisin, abatement or intrusion, is of no consequence provided it has been adverse, that is, inconsistent with the title of the claimant. The defendant in possession has a right to stand on the defensive, and throw upon the plaintiff the burthen of getting over the preliminary plea in bar by showing a title to sue, that is, by proving that he has made his entry or filed his bill within twenty years. The question respects the plaintiff's right to the remedy, not the defendant's title to the estate. A tortious act can never be the foundation of a legal, any more than of an equitable title. It is no more favored by a court of law than a court of equity, considered nakedly by itself; but the statute bar arises from other principles, admitting**

the title if it could be inquired into, to be clearly in favor of the plaintiff and against the defendant, still the question is whether he has prosecuted that title in time. The quiet and repose of the kingdom, the mischief arising from stale demands, the laches and neglect of the rightful holder, and all the other principles of public policy take away the remedy notwithstanding the title veri domini, and the tortious holding of the possessor. To advert to the merits is to shift the question from the real subject of inquiry. The case never arrives at that point; it is stopped in limine, equally in the courts of equity as of law. The title is changed in both by the operation of a public law, upon public principles without regard to the original private right. If the negligent owner has forever forfeited by his laches his right to any remedy to recover, he has in effect lost his title to recover. The defendant keeps possession without the possibility of being ever disturbed by any one." We need scarcely go beyond this case to collect the doctrine of adverse possession, as to its nature and effect upon equitable estates. It was twice at the rolls, first before Sir. Wm. Grant, 2 Meriv. 171, who held there could be no adverse possession of a merely equitable estate. Id. 357. This was in 1837. It came on again upon the equity reserved, before Sir Thomas Plumer, in 1820, 2 Jac. & Walk. 1. He differed from Sir Wm. Grant, and turned the whole cause against the complainant, on the ground that there was an equitable adverse possession. He mentioned the great importance of the question. "One of greater importance," he said, hardly ever arose in any cause. It is one on which every estate in the kingdom does or may depend." Among other things, he adverted to the rule at law. He said, that at law, "the lapse of twenty years affords a substantive insuperable plea in bar. **It is the fixed limit to the remedy; the tempus constitution. One day beyond is as much too late as one hundred years. This is the peremptory inflexible rule at law, fixed by possitive statutes, if there has been adverse possession and no disability or fraud.** No plea of poverty, ignorance or mistake can be of any avail. However clear and indisputable the title if the merits could be inquired into, however demonstratively tortious and wrongful the adverse possession, the fact of such possession and the time preclude all investigation of the title. **The door of justice is closed. The claimant cannot be heard to show his title. It is a decisive answer to him that he comes too late. That alone is the bar. His title remains, but he has lost his remedy.** The statute is founded upon the wisest policy, and is consonant to the municipal law of every country. It stands upon the general principle of public utility. Interest reipublicæ ut sit finis litium, is a favorite and universal maxim. The public have a great interest in having a known limit fixed by law to litigation, for the quiet of the community, and that there may be a certain fixed period, after which, the possessor may know that his title and right cannot be called in question. It is better that the negligent owner who has omitted to assert his right within the prescribed period, should lose his right, than that an opening should be given to interminable litigation, exposing parties to be harassed by stale demands after the witnesses of the facts are dead, and the evidence of title lost." 3 Jac. & Walk. 139, 140. **The reasoning and the decision in this case were adverted to and approved by the supreme court of the United States, in Elmendorf v. Taylor, 10 Wheat. 174.** The decree in Cholmondely v. Clinton being enrolled, the complainant appealed to the house of lords, where the cause was decided and the decree affirmed, in 1821. A sketch of the decision in that house is given by a note at the close of the report in 2 Jac. and Walk. 189. The full report occupies the whole of the first part of 4 Bligh's Parl. Cas. old series. The case was heard throughout on pleadings and proofs, was fully argued in every stage, and elaborate opinions were delivered by very able judges. It may well be inferred, therefore, that the doctrine which finally prevailed was well considered in all its relations. The complainant in that cause had also brought an ejectment, and filed his bill for a discovery in aid of that action. To that the defendant demurred, on the ground that, by the complainant's own showing, his remedy was barred. So the lord chancellor held. This was in 1823, and the case is reported in Turn. and Rus. 107, 118. At the last page, the lord chancellor adverted to the decision in the house of lords, saying, "I believe it was the intention of the house of lords to state this: that where there has been adverse possession, not accounted for by any disability, as covesture or infancy, for twenty years, a court of equity ought not to interfere."

I advert to this case the more particularly because I think the argument of Sir Thomas Plumer, which finally prevailed, gives a more just and clear view of the general policy of the statute, and the nature of adverse possession, than any other. One remark I have already cited, in respect to what possession is adverse. Whether it be a disseisin, abatement or intrusion, he says, is of no consequence provided it has been adverse, that is, inconsistent with the title of the claimant who is out of possession. It is inconsistency, or such a claim as puts the plaintiff at defiance, no matter how wrongful, or with what degree of known wrong in the possessor, as will be seen in many parts of his opinion. The whole burthen of the argument goes on a claim of title inconsistent with that of the plaintiff, irrespective of the question whether it be wrongful or rightful, with or without color of title, honest or dishonest. After being, in fact, out of possession for twenty years, it is too late to inquire of any fact beyond such possession except the disabilities mentioned in the statute. It is true that he mentions fraud as an additional disability even when speaking of the rule at law, and that is again mentioned without disapprobation when he is cited by the supreme court of the United States. I have already had occasion to notice three successive cases decided by the supreme court of this state, in which that has been repudiated; and I will make a single remark to show why Sir Thomas Plumer stated the exception, and why it cannot be received here unless this court are prepared to overrule what was held by the supreme court. The exception, no doubt, referred to the mere dictum of Lord Mansfield in Brss v. Holbeck, Doug. 654. The action was assumpsit to which the defendant pleaded the statute of limitations. The plaintiff replied stating certain facts which he insisted made out a fraud and fraudulent concealment of the cause of action by the defendant. On demurrer, the court overruled the replication, Lord Mansfield remarking that the replication did not make out a fraud; and adding that, if one had been made out, the case would have been very different. That dictum has been overruled expressly every time the question has been before the supreme court. They have considered themselves bound by the enumeration of disabilities in the statute. In the very last case, Allen v. Mille, Chief Justice Nelson says, "Some of the judges in England, in late cases, have intimated an opinion that a fraudulent concealment by the defendant would take the case out of the statute, even at law as well as in equity; but we are not aware of any decision upon the point. The intimation is founded upon the dictum of Lord Mansfield in Bree v. Holbeck, which Chief Justice Spencer, in Troup v. Smith, refused to acknowledge as an authority."

I trust I have already said enough to show that this strictness is not founded on any favor to the man who may be supposed to have committed a fraud, and kept it out of view till the statute shall have run against the injury. It is the impossibility of deciding after a certain time whether any fraud has been committed or not. In respect to a fraud of yesterday, the transaction may be so shrouded that the keenest vision cannot determine its character. The fraud must be left to inference from circumstances, and there is always some danger of mistake against innocence. After the lapse of many years this is peculiarly so; and the statute of limitations, therefore, interposes a bar to the accusation, as it does of all crimes except murder and treason. Standing on a pure equity, I am aware that the contrary has been put very strongly. **Story, J. said in Prevost v. Gratz, 6 Wheat. 497, "In a case where fraud is imputed and proved, length of time ought not, upon principles of eternal justice, to be admitted to repel relief. On the contrary, it would seem that the length of time during which the fraud has been successfully concealed and practised is rather an aggravation of the offense, and call more loudly upon a court of equity to grant ample and decisive relief."** But he immediately adds the best of all reasons, I think, why, on a question of legal right, the inquiry should be cut off after the statute has run. His words are, "But length of time necessarily obscures all human evidence; and as it this removes from the parties all the immediate means to verify the nature of the original transactions, it operates by way of presumption in favor of innocence and against imputation of fraud. It would be unreasonable, after a great length of time, to require exact proof of all the minute circumstances of any transaction, or to expect a satisfactory explanation of every difficulty real or apparent with which it may be encumbered." And the court denied relief on these grounds.

Take an illustration of the remarks of Judge Story from the case at bar. The complainants insist on the defendants taking issue and going into proof on the question, whether the corporation had presented a petition in 1705, by which they fraudulently set forth certain boundaries in an obscure way, with the intent to favor the pretence of a right to encroach on their neighbors. No human being has been alive for several generations who could speak to that question. The court or jury who are to try it must then make a guess in the best way they can, whether the boundaries were stated honestly. The defendants say "we have been in adverse possession for nearly firty years, of the whole land in dispute; and we decline going into the question, so long as a possession is a bar to all inquiry." And can there be a doubt, on looking at the statute, and the reason of the thing, that adverse possession was intended to bar an inquiry as well into questions of fraud in acquiring a title as any other? **Suppose some document to exist on which the complainants may ask a jury to infer fraud, would it not be most unreasonable to require this, when all living testimony to repel it must long since have ceased to exist?** Why should not the statute bar inquiry and cut off the complainants' documental evidence of one kind as well as another?

I am not aware that there can be any pretence of effectual concealment in anything else. The defendants, in the language of Sir Thomas Plumer, have de facto been in possession, claiming a title inconsistent with any in the complainants. The latter have been de facto, out of possession, and this appears to have been so with regard to them and those under whom they claim since 1785, nearly fifty years before their bill was filed. Even if both parties should be looked on as tenants in common when the Bogardus deed was obtained, the adverse possession since would be equally fatal; though I think it entirely clear that the bill shows not only an exclusive possession in fact, but that such possession was always adverse.

Being entirely satisfied, therefore, with the ground taken by his honor the chancellor, I have not deemed it necessary to discuss the questions of form upon which the case turned when it was before the vice chancellor. In my view of the case, on the complainants' own showing, there should be an end of this litigation.

I am of opinion that the decree of the chancellor should be affirmed, on the ground that the complainants' claim is barred by the statute of limitations.

By Senator FURMAN. It is admitted if there be a strong equity in favor of the defendants, they cannot be required to condemn themselves or expose their title to the searching questions of a bill of this nature; and that such is also the case where the equities are balanced between the parties. But the complainants here claim that they have a superior equity, or in their own words, a triple equity, based —first, on the allegation of confused boundaries; second, on the claim for an account; and third, on the charge of fraud.

On the first ground, the allegation of confused boundaries, I have examined thoroughly the complainants' bill, and upon carefully reading the description of the first tract of land of 130 acres claimed by that bill, and described as the **"Dominie's Hook," on a creek or inlet called Messpats kill, in the city of New York, I have come to the conclusion that it is much more than doubtful whether that tract was ever in the city and county of New York;** and I am the more strongly impressed with that doubt, from the fact that from all the examinations and inquiries which I have made, I cannot discover that there ever was any creek or kill of that name on Manhattan Island. Neither Benson in his Memoir on Ancient Names, Moulton in his View of New-Orange, now New-York, in 1673, or Watson in his Olden Time in New York, mention it, although they describe all the shores, creeks, inlets, hills and valleys known upon that island. But I do find there was a Messpats kill on Long Island, in Newtown, and that in the same town was a farm called the Bowery, which did anciently belong to the ministers of the Dutch Reformed Church of New-York, and was applied among other things to the support of their poor. This Messpats kill is described by that name in the Newtown purchase, under the Dutch government, bearing date the 12th day of April, 1656, and in Gov. Nicoll's patent of Newtown, under the English government, dated March 6, 1666, and in the year 1665 we have a conveyance of a farm at Messpats kill on Long Island, with a habitation and a tobacco house; and the term Bowery was not then or at any period used to designate any particular place, except in the single instance of the street in New-York city, but simply meant a farm; and so there was Corlear's Bowery, Stuyvesant's Bowery, and many others; and the same term was also applied to farms at Schenectady. Another reason which induced me thus critically to examine the description of that first tract of land, was that from a perusal of the bill I discovered a plain and apparent error, in fact upon its first page, where it is stated, that in the year 1663, Anneke Jans Bogardus was, in the words of the complainants, then **"of the village of Beverwyck in New Nederland,** so called, a place now within **the city and county of New-York;" whereas Beverwyck was never within the city and county of New-York, but** was one of the names by which Albany was then distinguished. The next piece of land

claimed by the bill, being sixty-two acres, is described as "lying on the south side of the house to the fence of the land belonging to the company," meaning the Dutch West India Company, and which the complainants locate at Warren street in the city of New-York, and extending therefrom northwardly. In order to ascertain whether there be in reality any such confusion of boundaries, **we must in the first place ascertain, if possible, where this land of the company, or the King's farm, as it was afterwards called, was located.**

It would be impossible at this distant period to locate accurately by tradition the boundaries of that farm; no two persons would place it within the same lines by many hundred feet; and in fact no two writers or historians have ever as yet agreed in their description of it. One, I recollect, states that the company's farm extended to the present Duane street; another locates it between Liberty and Cortlandt streets, and the complainants define its northern boundary to be at Warren street. Under the Dutch administration all the rear of the town beyond the walls was cast into farms said to have been six in number, called bouwerys. Van Twiller, the governor, occupied number one, on which was his mansion, and he had his tobacco plantation on number two. **This No. 1, which was the company's farm, (and with No. 2 afterwards known as the King's farm,) extended from Wall street to Hudson street. No. 2 was next beyond that, north. No. 3 was at Greenwich. No. 4 was on the plain of Manhattan, including the park or commons to the kolck.** All these farms originally belonged to the government, and most of them probably remained public property long after the period designated by the claimants as the time of the acquisition of their title.

There being no dependence to be placed on the recollections of individuals in such matters, as every person must have experienced who has been obliged to test the accuracy of such information, the only remaining evidence on which we can with certainty rely are the ancient maps made about that time. **And we fortunately have such evidence existing in the map of the city of New-York made by James Lyne, in the year 1729, which shews that there was no street beyond Broadway westward, and that the land on the western side of that street descended to the beach; and that from Cortlandt street northward all the ground west of Broadway was occupied by trees and tillage, and called "The King's farm." One of the boundaries of this farm being said to be partly by a swamp, if that swamp can be shown to have been far to the northeast of the spot where the complainants locate the northerly boundary of the farm at Warren street, it would seem to settle the question in the minds of most reasonable persons.** In the year 1775, Broadway, in the vicinity of what is now Grand street, was known as the New Road, and about the site of **Grand street** was then a **swamp**, and it was by marching a detachment of the American army along the edge of this swamp to the woods which were then near Richmond Hill, and then through the Greenwich road in the following year, 1776, that they were saved from what was then esteemed almost inevitable destruction. This historical fact is cited for the purpose of showing the locality of that swamp, and taken in connection with the other facts, will prove that the King's farm granted to the defendants legitimately covered the premises now claimed by the complainants.

And on the other hand, if we should apply the conflicting descriptions of this farm as given in the various instances to which I have referred, to the fact that the city of New-York, when the grant to the defendants was made, extended to Cortlandt street, in one instance you will see the farm entirely merged in the city, and nothing left for the legislature to grant, and in the other instances the King's farm would have been scarcely large enough for a garden in that day, which was not the case, for it was a large and important tract of land, and was granted to the defendants at that period because they had charge of the temporalities of a church to which the government looked for the propagation of christianity throughout this extensive country. If these things be true, and there can scarcely be a reasonable doubt of them, these complainants have been greatly mistaken in setting up their claims to these lands in the manner they have done; and that there cannot be any confusion of boundaries as they claim by their bill.

As to the claim for an account, in the view which I have taken of the first ground of equity, it cannot possibly exist. It is shewn by the complainants' bill that the defendants went into possession of the King's Farm in the year 1705, under a grant from the colonial governor; that under color of that grant they came into possession of the premises in question, and public documents now existing show that there is strong reason to believe that about the period of that grant those premises were understood to constitute a part of that farm. Does not this create a strong equity in favor of the defendants, or at least an equal equity with the complainants? and therefore this bill cannot be sustained upon the principles before stated.

It may be said that strictly speaking such an examination as I have given the facts in this case is not within the scope of an opinion upon this state of the pleadings—that may be so—but in a case of such great moment, one involved in the immense expense which has attended and will attend this litigation, I have deemed it my duty to lay before the parties interested such views as I have entertained of those facts, hoping it may be attended with beneficial consequences.

As to the third ground, the charge of fraud, as I intend to examine that in connection with the ground of defence set up under the statute of limitations, I shall leave it for the present.

Teller, one of the complainants, derives his descent from the daughter of Sarah Roeloff; and in order to get rid of the effect of a misjoinder of parties complainant having interest, with those having none, which it is charged is fatal in a bill of this kind, it is insisted that the daughter of Sarah Roeloff died when the Dutch law was in full force, and that her children all equally inherited. Whereas on the other side it is alleged that she died under the English law, and the descent was therefore liable to the law of primogeniture.

The vice chancellor of the first circuit holds that the English common law was, as a matter of course, introduced into this colony immediately after the conquest of 1664; and in that I am inclined to think he is right, notwithstanding the provision in the articles of capitulation as to the Dutch customs of inheritances. But it is not necessary to contend for that point here; it is sufficient for all the purposes of this decision that the English law was established here in the year 1674. The Dutch recaptured the colony in 1673, which act of itself put an end to and extinguished all the privileges and reservations in the articles of capitulation of August, 1664; and they retained it until October 31, 1674; when they ceded it to the English in exchange for Surinam. The first English governor after this cession, Sir Edward Andros, on the 9th of November following, issued his proclamation, declaring "that the known book of laws formerly established and in force under his royal highness' government is now again confirmed by his royal highness, the which are to be

observed and practised," &c. What was the meaning and intent of this proclamation is evident from the acts which followed its promulgation. Accordingly in the city of New-York, at a term of the mayor's court held March 13, 1674-5, proclamation was made of the governor's order that all persons intending to continue under the English government should come in at the ringing of the bell on the next Monday, to take the oaths of allegiance and fidelity. On the day mentioned, Cornelius Stenwyck, William Beeckman, Nicholas Bayard, Johannes De Piester, and divers others appeared and demanded a confirmation of their former privileges granted them by gov. Nicolls, who signed the articles of capitulation. The president requested to know what they were. They answered, "1. To have the liberty of the church. 2. That their people shall not be prest. 3. That the article of inheritances be confirmed. 4. That they shall not be obliged to take up arms against their own nation." All which they requested the court to inform the governor of, previous to taking the oaths, (being the same privileges as to the Dutch inheritances reserved by the articles of 1664.) The governor's answer was—"That without condition, articles or provisoes, they must take the oaths, otherwise to stand to the censure and penalty in the laws set forth. And at five meetings of the court subsequently, 314 citizens took the oaths required.

There has been considerable anxiety manifested in the course of this argument, to show that there were no colonial laws previous to the enactments of 1691, or that they were of such a loose and vague description as to merit no attention; and that even those had probably been lost or destroyed; and for that purpose, 2 Graham's History of the United States, 255, and Smith's History of New York, 4to. 124, have been cited. It is really strange how such matters get into histories, and pass from one age to another without contradiction. The truth is that those laws of the colony of New-York enacted in the years 1683, 84 and 85, are generally as well worthy of attention as any which have been passed since, but never having been printed, the public know little or nothing about them; and they are all now preserved in the office of the secretary of state. But it would be well probably if those laws could be discredited in this case, for they show clearly that the English common law was established in this colony immediately after its cession by the Dutch in 1674, if not previously. Thus we find by the charter of liberties enacted in 1683, it is provided that every freeholder shall have a vote in the election of representatives to the general assembly, and the article concludes in the following language: "By freeholders is understood every one who is so understood according to the laws of England." The same charter also declares, "That from henceforward no lands within this province shall be esteemed or accompted as a chattel or personal estate, but an estate of inheritance, according to the customs and practice of his Majesty's realme of England." To show that they meant the same should be conveyed as lands were in England, they also by the same instrument enact—"that no estate of a feme covert shall be sold or conveyed, but by deed acknowledged by her in some court of record, the woman being secretly examined if she doth it freely without the threats or compulsion of her husband."

This does not look as if the law was vague and indefinite, and to use the words of one of the authorities cited, shew there was any difficulty in knowing what the law was.

Vol. XXIV. 79

But this is not all the proof which exists from our public records and laws, which show that the English common law was adopted in this colony as early at least as I contend for, if the Dutch law ever existed, and was recognized after August, 1664. During the same session the legislature, October 29, 1683, passed "An act to settle courts of Justice," by which they established a "high court of chancery"—"to heare and determine all matters in equity"—and a common law court, occupying the position of our present supreme court, with "power and jurisdiction to hear, try and determine all matters, causes and cases, capital, criminal or civil, and causes tryable at common law." It is further shown that the English common law was so established in this colony, and that for that reason the colonial legislature deemed it necessary on the same day on which they passed the above law establishing those courts of equity and law, to enact "An act for regulating former mortgages," the object of which was to confirm some mortgages which had been given according to the Dutch mode of conveyancing, provided they should be foreclosed or renewed within eighteen months. And in the preamble of this act they recite—that "it hath been the custom and practice of the ancient inhabitants of this province commonly called Dutch, to use and exercise the methods of their own nation in mortgages of lands, houses and tenements, which is not according to the usage and method of England, and the now established laws of this province."

It has been urged by the counsel for the complainants that there were now existing many estates held under the Dutch conveyances made many years subsequent to the articles of capitulation, which conveyances were bad at the common law, and that therefore the inference was irresistible that the Dutch law continued in force for a long series of years subsequent to the capitulation of the year 1664. That such conveyances were made, there is not any doubt, and it is equally clear, that they were bad at common law, but the inference so sought to be drawn, does not arise, and is rebutted by the facts now existing, as shewn by the statute last above cited in relation to the Dutch mortgages; and also from the fact that the colonial legislature from time to time enacted laws for the purpose of confirming the estates said to be created under those conveyances, which would not have been necessary, if it was true that the Dutch law existed in force as thus claimed. So by the "Act of settlement," passed November 2d, 1683, they confirmed the titles of all persons who had been in the actual possession of lands for four years prior to the passage of that law; reserving the right of "all persons under age, feme covert, non compos mentis, imprisoned, or beyond the seas"—thus again showing most clearly, that in all matters relating to estates, they were governed by the common law, and not by the civil law as established under the Dutch government; and they required this act of settlement to be published and proclaimed at the town house in each town in the province, three several days within four four months after its passage. And so the very instance cited by the counsel of the devise of the manor of Fordham to the Dutch reformed church in New-York, proves my position; for if it had been good under the Dutch law, and that law had been in force when the devise was made, it would not have been necessary to obtain its confirmation from the colonial legislature, in the year 1755.

The same legislature also in the same year, 1683, by "An act to prevent frauds in conveyancing lands," and by "An act to prevent deceit and forgery," adopted the English common law in relation to conveyancing and livery of seizin; and they also at the same time declared that the same should not not "include former deeds, mortgages or conveyances, but leave them in the same condition as they were before the passage of the act." Our ancient statutes and public rec-

ords thus teem with evidence tending to show that the common law of England was the law of the land in this colony from the year 1674; and the reason why so little is said on that point in the statutes subsequent to the year 1691, is that it was regarded as settled by previous enactments. If this was not the fact, the various courts of the province, and among them those of the highest judicial authority, must have existed for many years without any legal basis; a supposition too absurd to be entertained for one moment. That historians who have written since the period of our revolutionary contest, or even those who framed their works some sixty or seventy years after those enactments, should have fallen into the error of supposing those statutes had no existence, or were lost, is not so very strange, when we are informed that none of the statutes of this colony prior to the year 1691, were ever printed, with the exception of one or two single acts; and that but three complete manuscript copies of those statutes have ever existed, one of which was preserved in the office of the secretary of state, now in the city of Albany; another in the office of the clerk or register in Kings county, where it still remains, although not now, from its great age, in an entirely perfect state; and the third copy was in the clerk's office at Southampton, in Suffolk county. Indeed, so little has the attention of the public been called to this curious and valuable body of laws, that one historian, the Hon. Mr. Wood, in the earlier edition of his history of Long Island, asserted that no legislature sat in this colony between the year 1684 and 1691, and was not convinced of his error until some original acts were shown which had been passed at the session of 1685, and he was undoubtedly as firmly convinced that he was correct in his assertion, as ever Mr. Graham or Mr. Smith could have been as to the truth of their allegations that those laws were vague and indefinite, or had been lost or destroyed.

This settles the question, that when the daughter of Sarah Roelof died, her estate descended under the English common law; and therefore the complainant Teller cannot in the manner in which his descent has been traced, have any title to these lands, admitting for argument sake that they belonged to the complainant's ancestor. And he having no interest therein, has no right to file this bill against the defendants, and the same should be dismissed. Teller having been joined with the other complainants in prosecuting this as one undivided claim, it is in my judgment fatal to the whole bill. It is true, there is a strong distinction between joint demands and several demands, and that this distinction has been recognized in the federal courts of the United States. But it is only where such demands may be disjoined and distinctly appear as to amount and extent, that they may be regarded as separate or several demands, so as to authorize the bill to be dismissed as to such of the complainants who have no title, and to be held good as to others; and not in a case like the present, where the amount and extent of the interest no where appears upon the face of the pleadings, but on the contrary is shewn to be an undivided, indefinite interest, and one which in all human probability never could be ascertained, even by years of labor. A general demurrer to the whole bill has been repeatedly held good, where a party having an interest joins with him as a complainant, another having no interest, if the fact appears upon the face of the pleadings, as it does in this instance.

As another ground for sustaining this bill and the claim founded upon it, it is urged that the corporation of Trinity Church was under a disability to acquire title to these premises, they having at that time the full amount of revenue allowed by the act of 1704. And to show this, the complainants set forth that act, which declares that the property to be acquired by that corporation shall not exceed the yearly rent of £500; and then they allege that in the subsequent year, 1705, the colonial legislature granted to that corporation the Duke's farm, or as it was also called, the King's farm, at the annual rent of 3s. This provision, if confined as the bill seems to claim, to the value of £500 as it then existed, there is nothing to show that these defendants ever did at any time acquire any real estate which was, at the time of its acquisition, above the yearly rent of £500—for I presume on one will contend that upon such a limitation, an estate fairly within it at the time of acquisition will become divested by a subsequent rise in its value. Such an unreasonable view of the case cannot be pretended by any one who has given it the least thought. If it should, however, be so contended, then the £500 of the year 1704, is not the £500 of the year 1840, as all must know who have given the subject the least examination, for the decrease in the value of money, and the increase in the value of grain and other commodities have greatly changed the real amount of that restriction. Such is the principle upon which the fellowships in many of the colleges in England, are retained at this day, although in terms vacated by their corporation statutes made some century or two previous upon the incumbent obtaining an estate or perpetual pension of the yearly value of £5. This principle is advocated and sustained in a work of great authority and learning, entitled the "Chronicon Preciosum," by Bishop Fleetwood; published in 8vo. London, in the year 1745. In this view of the case the objection is without foundation. But there is another aspect in which it may be regarded, which is equally fatal. This restriction is a mere question of governmental policy, and individuals, as such, have nothing to do with it, and no control over it; and the utmost that can be said about it is, that the title of the corporation is perfectly good as to the whole world even if it should exceed that restriction in its annual rents, and it is not for that reason void, but only voidable at the instance of the supreme power. In my opinion, however, even this is a strained view of the case. I do not even believe it to be voidable—the estate must at the time of its acquisition be of a greater yearly income than the amount of the restriction to give that restriction vitality. And the fact that an estate should many years afterwards accidentally, by building a city upon it, or for any other cause, acquire a greater value, will never authorize the application of that restrictive principle.

I have now disposed of all the material questions arising in this case except that of the statute of limitations—the application of which forms one of the most important points to be decided.

The complainants show, upon the face of their bill, that these defendants have been in the exclusive possession of the premises which they now claim for more than forty years, previous to the commencement of the present suit; and they do not set forth any excuse sufficient at law or in equity to take their case out of the general rule, that a suit will be barred by lapse of time unless commenced within twenty years after the complainant's right of action accrues. It is true they do not set this forth in express terms, but they do say that before the revolution this corporation obtained possession under claim of the grant of the king's farm, and with the intent to deprive the Bogardus heirs of their estate; and that they have continued in the possession thereof, and in the actual receipt of the rents and profits ever since. If this does not constitute an adverse possession, that is, a posession inconsistent with any title in the com-

plainants, I must confess that I would find it difficult ever to comprehend the meaning and extent of that term. The complainants do, it is true, make many and various allegations connected with this admitted possession. In one of which, after describing certain alleged wrongs and trespasses, they charge, "and in this way a variety of lodgments were from time to time made by the said corporation in the more accessible and exposed parts of the Bogardus lands, particularly the Bowery lands aforesaid, which lay to the south of Messpats kill, and not far distant from the northerly extremity of the King's farm." From what I have previously said in relation to this farm bounded upon Messpats kill, it must be evident to most persons that this bill has been carefully drawn, not so much with a reference to what can be proved in the case, as to make out a prima facie claim which would compel the defendants to exhibit and set forth their title deeds and documents, and thus enable the complainants to avail themselves of any weak point which they might discover in them, from carelessness in the mode of preparing papers at that distant period, or from the loss or destruction of some connecting links in the chain of documentary evidence during so many ages as have elapsed since this title was originally granted to these defendants; and it also serves to shade the aspect of that long catalogue of wrongs and grievances elaborately portrayed in the complainants' bill.

All those charges of tearing down fences, and forcible ejectments, are entirely matters of inducement, and not facts important to the decision of this cause; for, suppose them all true, unless the complainants could establish a clear and good title to the premises in question, they could not sustain their action by reason of those matters, let them be alleged in however strong language. And further, if their title to the premises was not good, all these ejectments and dispossessions were no more than they deserved for trespassing upon the lands which did not belong to them—which shows conclusively that such matters can only be stated by way of inducement. These complainants can have no good title if the law presumes against it, or if the law presumes such title to be in another person. So a receipt for twenty years or rent issuing out of land is on the common principle prima facie evidence of title. Matthews on Presumptive Evid. 310. On the like principle a non-payment for a long period of a rent charged upon land, will operate as a presumptive bar to the grantee of the rent. Ibid. 311. In this case it appears upon the face of the pleadings that the defendants have been in the receipt of the rents of these premises for about half a century; and that the complainants have been out of the possession of the premises, and out of the receipt of the rents for the same period; and nothing appears, that I can see, from a careful examination of the bill, which can bar the presumptions which thus arise from that state of facts.

The complainants, however, endeavor to get over the plain and obvious provisions of the statute of limitations, by engrafting upon it an exception which it does not contain: that those claiming such title must, in addition to their possession, know it to be honest, and their original entry must be made in good faith. If this doctrine be sustained, the result will be, that in all trials of ejectment where the title of the defendant is sought to be sustained on a long and quiet possession, it will not be the title which will be tried, but the good faith with which the entry upon the land was made, probably a century or more ago, a fact which it would be impossible to show in nine cases out of every ten. It would enable any person, without having the least shadow of title, to harass and perplex with a long and costly litigation, the owners of lands and estates which have been in their families for many ages by filing bills against them containing allegations of fraud in the original entry. It can never be that such is law in this state, or in any other community where the rights of individuals in person and estate are protected. If parties have legal claims to property, they should settle their controversies before time has drawn its veil over all the transactions connected with it; before the witnesses who could testify as to the truth of the facts thus alleged are all departed to their long account; and before the documents and written evidences which would explain and make clear many things now in doubt and obscurity, are destroyed or lost. If they wait until after all this has taken place, they cannot reasonably expect that any court will give an extra liberal construction to the statute of limitations for the purpose of letting in their claim. They must, for the sake and preservation of their own rights and their own property, and that of the whole community, which would be jeopardized by the establishment of a different rule, look for an application of that statute in its plain and clear interpretation to their case.

I can see no good reason for sustaining this claim, either upon the facts or the law of the case as set forth by the complainants themselves; and I am therefore in favor of affirming the decree of the chancellor.

By Senator LEE. The decree should be affirmed, for the reasons and on the grounds assigned by the chancellor.

It appears on the face of the bill, that the complainants' claim is barred by lapse of time, as the defendants are admitted to have been in exclusive possession, exercising acts of ownership, as selling, leasing, &c. since 1785; and it is not averred that any ancestors of the complainant have been in possession since that period.

But the bill is drawn with a view to take the case out of the operation of the statute of limitations, and defeat the defence of adverse possession by the charge of fraudulent intent in obtaining the original grant and in taking possession. Without examining here how far fraud in the inception of an adverse possession invalidates it, or how far the decision of this court in Livingston v. Peru Iron Company

Vol. XXIV. 80

is to be regarded as establishing that doctrine, I think that the facts set forth do not warrant the application of that rule in any shape. The charge seems to be that of fraudulent intent—morally bad indeed, but not embodied or exhibited in any fraudulent act, instrument or deed. It is therefore wholly intangible. The grant to the church is not questioned; it is confessedly good, whether its boundaries include the contested lands or not. There is no fraudulent act charged, such as to vitiate an instrument or deed. The distinction between a fradulent or illegal act, and an intent or affection of the mind, not susceptible of proof, is well established in Van Ness v. Hamilton, 19 Johns. R. 372, where Chief Justice Spencer says, "Instead of a trial of fact, the inquiry would be as to the secret operations of the mind and thought," which the court held to be a bad allegation. See to the same purpose the opinion of Mr. Justice Sutherland, in The People v. Manhattan Company, 9 Wendell, 377. Here the bill states that the property is claimed by the defendants under color of the purchase and of the patent from Governor Cornbury; or, as it is said in another place, they claim that the lands are within the scope of that instrument or patent.

The buying out and receiving a conveyance from one of the heirs against whom the church had long claimed title, and

over whose possession they had exercised, or claimed and attempted to exercise acts of ownership, afford no legal presumption of abandonment of prior life. The church has had an exclusive adverse possession since 1785, on the showing of the bill; and it there also appears to have commenced under claim of title from the Cornbury patent, a title wholly adverse to that under which the complainants claim.

I cannot see how the question of original title can now be opened, without overthrowing the known conservative policy of our law as to limitation of real actions, and the possession of real estate, as well as disregarding the express provisions of our present and former statutes on these heads. Such a precedent would open the flood-gate to litigation, and shake the security of titles to large tracts, in our older counties, where it is well known that owing to ancient prejudices against recording, and other circumstances, large numbers of freeholders have no other evidence of title, than ancient and hitherto undisputed possession in themselves and their ancestors.

I do not think that the case is affected by the general doctrine claimed to be asserted in Livingston v. Peru Iron Company, 9 Wendell, 515, that possession commencing under a fraudulent or void deed cannot be considered as adverse. Yet lest that decision be supposed to apply here, I would remark, that we ought to distinguish between the reasoning of Chief Justice Savage and the decision of the court, a majority of whom voted with him. The chief justice applies the rule to all possessions claiming to be adverse, whether to bar a recovery or to make void a conveyance by the true owner while out of possession. The case before the court involved only the latter point, and the two questions do not stand on the same ground, nor does the decision of one necessarily dispose of the other. **Our revised statutes, in re-enacting the rule of law which had already been stablished, judicially, declare, "that every grant of land shall be absolutely void, if at the time of the delivery thereof such lands shall be in the actual possession of a person claiming under a title adverse to that of the grantor." 1 R. S. 739. The decision of the courts in the case referred to is claimed as establishing the principle, that a deed fraudulently obtained from the owner, or otherwise voidable by him, does not enable the grantee to claim a title adverse to the true owner so as to invalidate a second conveyance, but that the first being voidable, the second is good, though from a grantor out of possession. But as to possessory titles acquired by lapse of time, the rule previously settled by judicial exposition is thus fixed by legislative enactment: "Whenever the occupant, or those under whom he claims, entered into possession of any promises, under claim of title exclusive of other right, founding such claim upon some written instrument as being a conveyance of the premises in question, and there has been continued occupation and possession of the premises under such claim for twenty years, the premises shall be deemed to be held adversely." 2 R. S. 294.** Here the fact of the claim being founded upon some written instrument, coupled with twenty years' possession, is all that is required in order that "the premises shall be deemed to be held adversely." The question whether the original adverse possession commenced under a valid deed is not to be inquired into, as perhaps it could be under the construction attempted to be given to the decision in Livingston v. The Peru Iron Company, were it an adverse possession to bar a subsequent deed given by the true owner out of possession, and before any possessory title had accrued by lapse of time.

I have hitherto considered the case of Livingston v. The Peru Iron Company, as others seem to view it, as establishing the principle, that a deed fraudulently obtained is not available as the foundation of an adverse possession. For myself I find nothing in that decision warranting that conclusion, and I humbly conceive it settles no such principle, and establises no such rule. I shall therefore examine it something more at large.

The chancellor had in that case decided that the deed to Murray under which the defendant claimed to derive title, was fraudulently obtained and was voidable on account thereof, but not void; and that the possession under it, there being a subsisting deed, was adverse; and that in consequence thereof the legal title to the premises in question did not pass to the complainant, H. R. Livingston by the deed executed to him by his father, while such premises were thus adversely held and occupied under such voidable deed. I nowhere find in the opinion of the chief justice, that a deed obtained by fraud is thereby rendered void; nor that a possession held under a voidable deed may not be adverse. The positions urged by the chief justice as the foundation of the conclusions to which he arrives in that opiinon, are, 1st., that to render a conveyance by the true owner void as to the person claiming by possession, that person must have possession at the time of the execution of such conveyance, and that such possession must be adverse to such owner; that when the person claiming to hold by possession has no written evidence of title, but claims by parol to be the owner, there must be actual occupancy a pedis possessio, a substantial enclosure by fence, sufficient for the protection of the crops, and it must be marked by definite boundaries, and that there was in that case no such adverse possession and none within any of the acknowledged principles on that subject; that there was nothing like an adverse possession independent of the deed, &c.; and, 2d. that where the possession is claimed to be under a paper title, it must be a subsisting and not a void deed, and that such deed must describe the premises claimed to be so held adversely. But he admits that it is not necessary that such deed should be a valid one, or should convey a valid title. He says that it is urged that a deed voidable only must be avoided by special pleading. This he does not controvert, but admits, in answering thereto, when the deed is void, the plea is non est factum; and that the deed in that case under which the defendant claimed to hold adversely was not merely voidable, but was absolutely void; a nullity and no deed. He says a deed under seal cannot be executed by an attorney without authority under seal; that the deed in that case was executed by the Sperrys as the attornies of John Livingston, and that they had no authority from him to execute it; that they had no authority other than a letter from Livingston directing them to contract with Palmer for the sale of the premises to him, and this letter containing the directions was obtained by fraud and was therefore void; and that even from the authority thus obtained, the Sperrys entirely departed by executing a full covenant deed of the premises not to Palmer but to Murray. He therefore insists that the deed thus executed was not the deed of John Livingston, but was utterly void, an entire nullity, and that any pretended entry under it was an entry without any deed. To show that that decision was confined to this one principle, that the deed was void, and not merely voidable he adds, "It may be said that if the deed is void, then the remedy at law is complete, and a resort to a court of equity was unnecessary." To that objection he says, it is a sufficient answer that the point was not raised nor discussed in the court below, and besides the bill seeks a discovery. These seem to me to be the conclusions of Chief Justice Savage in that case with

whom the court concurred in opinion. I therefore look in vain for any authority in that case for the principle insisted on, that an adverse possession cannot be set up on a possession obtained under a deed procured with a fraudulent intent, or by acts and representations actually fraudulent.

I further consider it important for the peace and security of titles to uphold the decision of the vice chancellor as to one point, i. e., that the manner of acquiring the complainants' titles, the term and extent, not of property, but of estate, should be made to appear, before the defendants can be called upon to answer. The claimants have not deduced a prima facie title. For the ordinary period of two or three generations, and until 1786, the law of primogeniture and the preference of the male line prevailed, whatever may have been the earlier law of the colony during the Dutch government, and immediately after the cession. The claimants state that they are "heirs with others," but that is to say no more than that they have a legal claim. In a bill of discovery, the obligation is imposed upon the complainants to make out a prima facie title in themselves, before they can call upon the party in possession to disclose his title. The complainants in this case have not made out such presumptive title by descent. They have not shewn how they are heirs. It does not appear whether they claim through the elder line, or whether when they claim through daughters, there was no male line entitled to preference in the order of descent. These are facts within the probable knowledge of the complainants, and essential to be set forth.

I am therefore for affirming the decree.

By Senator LIVINGSTON. It appears that Trinity Church has been in possession of the lands, now claimed by the applicants, certainly ever since the year one thousand seven hundred and eighty-five.

The legislature of this state, in order to quiet old possessions, and render secure the peaceable occupation of lands to persons who had become purchasers, or obtained by inheritance lawfully, and without fraud, as respects themselves, and believing it to be the interest of the people of this state that claims which had lain dormant for a great length of time, should not be brought up to turn men out of the possession of their lands, and thereby keep open an everlasting door for constant and continued litigation, productive only in many cases of no other result excepting ill will and expense to all the parties, passed a statute limiting the time in which actions to recover lands in this state should be brought; and although this act may not strictly apply to a court of equity, yet that court will, I think, in most, if not in every case, follow the law upon that subject, and more particularly so when the principle of the law is intended to render secure the occupants of land, long possessed, and held without any molestation or hindrance, believing their title to be secure and legal.

I cannot feel myself justified in saying or believing, that the patent from Queen Ann was obtained by fraud. I shall never be ready, or prepared to believe in fraud, merely because it may be presumed. I have a better opinion of mankind, and shall require very substantial proofs, whenever I am compelled to believe it.

I do not find sufficient grounds in the charges contained in this bill, to satisfy my mind that I ought to be instrumental in disturbing a possession of such long standing.

This appears to me to be precisely one of those cases, where the decisions of this court should silence claims of this nature.

The wealth, or the poverty of the parties, dwell upon in the argument, should form no part of our consideration, either one way or the other, in making up our decision.

But in almost every case of such long standing and continued possession, the injury and injustice would appear to fall upon the party holding the estate, as no absolute loss can accrue to the party who never had the property, and who in all probability never knew of any shadow of right he might be supposed to have, until some meddling and perhaps interested friend kindly puts him in the way of going to law, to obtain a phantom, but in reality to lose a substantial fee. That this case has been brought in this way, I do not pretend to say, neither do I believe it.

But I am decidedly opposed to all such antediluviam claims, and if once it is known, or believed, that estates and properties, no matter how long they may have been enjoyed, or honestly possessed by the occupant, can be disturbed and broken up, there is no estate, or farm in the whole country but some individual may be found to bring an outlandish, or outlawed claim, and break up the peace of honest men and their families, and destroy the comfort of whole communities.

I am therefore, decidedly of opinion that the decree of the chancellor should be affirmed.

On the question being put, Shall this decree be reversed? all the members of the court (seventeen being present) answered in the negative. Whereupon the decree of the chancellor was affirmed.

No. 8

Governor Fletcher Lease to Trinity.

RECORDED for the Church Wardens & Vestrymen of Trinity Church.

WILLIAM the third by the Grace of God King of England Scotland ffrance and Ireland Defender of the faith &c To all to whom these Presents shall come or may Concerne Sendeth Greeting WHEREAS our Loving Subjects the Church Wardens & Vestrymen of Trinity Church within our City of New Yorke in America have upon their humble Peticon Presented unto our Trusty and welbeloved Coll Benjamin Fletcher our Captaine Generall and Governour in Cheife of our Province of New Yorke and Territoryes Depending thereon in America &c Prayed a Lease of our farme Scituate lyeing and being upon New Yorke Island on the West side thereof Called and known by the Name of the Kings farme at a Moderate Rent for the Terme of Seven Years NOW KNOW YEE that as well for and in Consideracon of the Yearly Rent of herein after reserved as also for Divers other Good Causes and Consideracons us thereunto especially moving Wee have Demised Lett and to farme letten and by these presents Do Demise Lett and to farme Lett unto the Rector and Inhabitants of our said City of New Yorke in Communion of our Protestant Church of England as now Established by our Laws and to their Successours ALL that our aforesaid farme with all the Houses Ereccons and Building upland and Meadows Ground feedings Pastures Swamps Ways Easements Passages Immunityes Libertyes Priviledges and Appurtenances whatsoever to the same belonging or in any manner of wayes Appertaining or therewith all used Occupyed Possessed & Enjoyed or Accepted Reputed or Taken as Part Parcell or Member thereof TO HAVE AND TO HOLD the aforesaid Farme and all and Singular other the herein before menconed or intended to be hereby Demised Premisses unto the said Rector

and Inhabitants of our said City of New Yorke in Communion of our Protestant Chuoh of England as now Established by our Laws and to their Successours from the first Day of August which shall be in the Year of our Lord one thousand six hundred and Ninety eighth for and during the Terme & Space of Seven Years from thence next ensueing and fully to be Compleat and Ended YEILDING and Paying therefore Yearly and every Year unto us our Heirs and Successours on the feast Day of the Annunciation of our blessed Virgin Mary at our said Citty of New Yorke the Yearly Rent of Sixty Bushells of Good & Merchantable Winter Wheate in Liew and Stead of all other Rents Services Dues Dutyes and Demands whatsoever and Leaveing the said farme at the Expiracon of the said Terme in as Good Repair as the same shall be when Possession is taken by the abovesaid Corporacon IN TESTIMONY whereof Wee have Caused the Great Seale of our said Province to be hereunto affixed WITNESSE our said Trusty and wellbeloved Collonell Benjamin ffletcher our said Captain Generall and Governour in Cheife of our said Province of New Yorke and the Territoryes and Tracts of Land Depending thereon in America and Vice Admirall of the same our Leiv.t and Commander in Cheife of the Militia and of all the forces by Sea and Land within our Collony of Connecticutt and of all the fforts and Places of Strength within the Same at our ffort in New Yorke the Ninteenth Day of August in the Ninth Year of our Reigne Annoq Domini 1697. Ben ffletcher By his Excellencyes Command David Jamison D: Secry.

I do hereby Certify the aforegoing to be a true Copy of the Original Record. COMPARED therewith By Me.

LEWIS A: SCOTT. Secretary.

No. 9

King Charles the Second's Grant of New Netherland, etc., to the Duke of York

Charles the Second by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith &c. To all to whom these presents shall come greeting: Know ye that we for divers good causes and considerations us thereunto moving have of our especial Grace, certain knowledge and mere motion given and granted by these presents for us our heirs and successors do give and grant unto our dearest brother James, Duke of York, his heirs and assigns, All that part of the main land of New England beginning at a certain place called or known by the name St. Croix next adjoining to New Scotland in America and from thence extending along the Sea Coast unto a certain place called Petauquine and so up the River thereof to the furthest head of the same as it tendeth Northward; and extending from thence to the River Kinebequi and so upwards by the shortest course to the River Canada Northward. And also that Island or Islands commonly called by the several name or names of Matowacks or Long Island situate or lying and being towards the West of Cape Cod and the narrow Higansetts abutting upon the main land between the two Rivers there called or known by the several names of Connecticut and Hudson's River together also with the said River called Hudson's River and all the land from the west side of Connecticut to the East side of Delaware Bay. And also all those several islands called and known by the names of Martin's Vineyard and Nantukes otherwise Nantuckett: Together with all the Lands Islands, Soils, Rivers, Harbors, Mines, Minerals, Quarries, Woods, Marshes, Waters, Lakes, Fishings, Hawking, Hunting and Fowling and all other Royalties, Profits, Commodities and Hereditaments to the said several Islands, Lands and Premises belonging and appertaining with their and every of their appurtenances; and all our Estate, Right, Title, Interest, Benefit, Advantage, Claim and Demand of, in and to the said lands and premises or any part or parcel thereof and the reversion and reversions, remainder and remainders together with the yearly and other rents, Revenues and Profits of and singular the said premises and every part and parcel thereof: to have and to hold all and singular the said lands, islands, hereditaments and premises with their and every of their appurtenances hereby given and granted or hereinbefore mentioned to be given and granted unto our Dearest Brother James, Duke of York, his heirs and assigns forever to the only proper use and behoof of the said James, Duke of York, his heirs and assigns forever, to be holden of us, our heirs and successors as of our manor of East Greenwich and our County of Kent in free and common soccage and not in Capite nor by Knight service yielding and rendering. And the said James Duke of York doth for himself, his heirs and assigns covenant and promise to yield and render unto us our heirs and successors of and for the same yearly and every year forty Beaver skins when they shall be demanded or within Ninety days after. And we do further of our special Grace certain knowledge and mere motion for us our heirs and successors give and Grant unto our said Dearest Brother James, Duke of York, his heirs, Deputies, Agents, Commissioners and Assigns by these presents full and absolute power and authority to correct, punish, pardon, govern and rule all such the subjects of Our heirs and successors who may from time to time adventure themselves into any of the parts or places aforesaid or that shall or do at any time hereafter inhabit within the same according to such laws, Orders, Ordinance, Directions and Instruments as by our said Dearest Brother or his assigns shall be established; and in defect thereof in case of necessity, according to the good discretion of his Deputies, Commissioners, Officers or Assigns, respectively; as well in all causes and matters Capital and Criminal as civil both marine and others; so always as the said Statutes, Ordinances and proceedings be not contrary to but as near as conveniently may be agreeable to the Laws, Statutes and Government of this Our Realm of England, and saving and reserving to us our Heirs and successors the receiving, hearing and determining of the Appeal and Appeals of all of any person or persons of in or belonging to the territories or Islands aforesaid in or touching any Judgment or Sentence to be there made or given. And further that it shall and may be lawful to and for our said Dearest Brother his heirs and assigns by these presents from time to time to nominate, make, constitute, ordain and confirm by such name or names, stile or stiles as to him or them shall seem good, and likewise to revoke, discharge, change and alter as well all and singular, Governors, Officers and Ministers which hereafter shall be by him or them thought fit and needful to be made or used within the aforesaid parts and Islands; and also to make, ordain and establish all manner of Orders, Laws, directions, instructions, forms and ceremonies of Government and Magistracy fit and necessary for and concerning the Government of the territories and Islands aforesaid, so always as the same be not contrary to the laws and statutes of this Our Realm of England; but as near as may be agreeable thereunto: And the same at all times hereafter to put in execution or abrogate, revoke or change not only within the precincts of the said Territories or Islands but also upon the seas in going and coming to and from the same as he or they in their good discretions shall think to be fittest for the good of the adventurers and Inhabitants there, and we do further of our special Grace, certain knowledge and mere motion grant, ordain and declare that such Governors, Officers and Ministers as shall from time to time be authorized and appointed in manner and form aforesaid shall and may have full power and authority to use and exercise Martial Law in cases of rebellion, insurrection and mutiny in as large and ample manner as Our Lieutenants in Our counties within Our Realm of England have or ought to have by force of their Commission or Lieutenancy or any Law or Statute of this Our Realm. And We do further by these presents for us Our heirs and successors, grant unto our said Dearest Brother James, Duke of York, his heirs and assigns, that it shall and may be lawful to and for the said James, Duke of York, his heirs and assigns in his or their discretion from time to time to admit such and so many person or persons to trade and traffic unto and within the territories and islands aforesaid and into every or any part and parcel thereof, and to have possess and enjoy any Lands and Heriditaments in the parts and places aforesaid as they shall think fit according to the Laws, Orders, Constitutions and Ordinances of Our said Brother, his heirs, Deputies, Commissioners and assigns from time to time to be made and established by virtue of and according to the true intent and meaning of these presents and under such conditions, reservations, and agreements as Our said Brother, his heirs or assigns shall set down, order, direct and appoint

and not otherwise as aforesaid, and we do further of Our especial Grace, certain knowledge and mere motion for us our heirs and successors give and grant to our said Dear Brother his heirs and assigns by these presents, that it shall and may be lawful to and for him, them or any of them at all and every time and times hereafter out of any Our Realm or Dominions whatsoever to take, lead, carry and transport in and into their voyages and for and towards the Plantations of Our said Territories and Islands all such and so many of Our loving subjects or any other strangers being not prohibited or under restraint that will become Our Loving subjects and live under Our allegiance as shall willingly accompany them in the said voyages together with all such clothing, implements, furniture, and other things usually transported and not prohibited as shall be necessary for the inhabitants of the said Islands and Territories and for their use and defence thereof and managing and carrying on the trade with the People there and in passing and returning to and fro: Yielding and paying to us, Our Heirs and successors, the Customs and Duties therefore due and payable according to the Laws and customs of this Our Realm. And we do also for us Our Heirs and successors, grant to Our said Dearest Brother, James Duke of York, his heirs and assigns and to all and every such Governor or Governors or other officers or Ministers as by Our said Brother his heirs or assigns shall be appointed, to have power and authority of Government and Command in or over the inhabitants of the said Territories or Islands that they and every of them shall and lawfully may from time to time and at all times hereafter forever for their several defence and safety encounter, expulse, repel and resist by force of Arms as well by sea as by land and all ways and means whatsoever all such person and persons as without the special License of Our said Dear Brother his heirs or assigns shall attempt to inhabit within the several precincts and limits of Our said territories and Islands: and also all and every such person and persons whatsoever as shall enterprize or attempt at any time hereafter the destruction, invasion, detriment or annoyance to the parts, places or Islands aforesaid or any part thereof. And lastly our will and pleasure is, and we do hereby declare and grant, that these Our Letters Patents or the enrolment thereof shall be good and effectual in the law to all intents and purposes, whatsoever notwithstanding the not reciting or mentioning of the premises or any part thereof, or the meets or bounds thereof, or of any former or other Letters Patents or Grants heretofore made or granted of the premises, or of any part thereof by us or of any of our progenitors unto any other person or persons whatsoever, bodies Politic or Corporate, or any Act, Law or other restraint incertainty or imperfection whatsoever to the contrary in any wise notwithstanding; although express mention of the true yearly value or certainty of the premises, or any of them, or any other gifts or grants by us or by any of our progenitors or predecessors heretofore made to the said James, Duke of York, in these presents is not made, or any statute, act, ordinance, provision, proclamation or restriction heretofore had, made, enacted, ordained or provided, or any other matter, cause or thing, whatsoever to the contrary thereof in anywise notwithstanding.

In Witness Whereof we have caused these, Our Letters, to be made Patents, Witness Ourself at Westminster the twelfth day of March in the sixteenth year of our reign. (1664).

By the king. Howard.

Original in State Library, Albany: Patents I, 109-115 Leaming and Spicer, 3-8; New York Colonial Documents, II, 295-298.

Brodhead's History of the State of New York II., 651-652.

VIEW OF OLD BUILDINGS IN WILLIAM STREET.
looking from cor. of Liberty St. towards Maiden Lane N.Y. 1800.

No. 10

The Duke of York's Commission to Colonel Richard Nicolls

James, Duke of York and Albany, Earl of Ulster, Lord High Admiral of England and Ireland, etc., Constable of Dover Castle, Lord Warden of the Cinque Ports and Governor of Portsmouth, etc. Whereas it hath pleased the King's Most Excellent Majesty, my Sovereign Lord and Brother by His Majesty's Letters Patents, bearing date at Westminster the twelfth day of March in the sixteenth year of his Majesty's Reign, to give and grant unto me and to my heirs and assigns, All that part of the mainland of New England, Beginning at a certain place called or known by the name of Saint Croix, next adjoining to New Scotland in America, and from thence extending along the sea coast, into a certain place called Petaquine and so up the River thereof to the furthest head of the same; as it tendeth Northwards, and extending from thence to the River of Kinebequi, and so upwards by the shortest course to the River Canada Northwards, And also all that Island or Islands commonly called by the several name or names of Matowacks or Long Island, situate, lying and being towards the west of Cape Cod and the Narrow-Higansets, abutting upon the mainland, between the two rivers there called or known by the several names of Connecticut and Hudson's River; Together also with the said River called Hudson's River and all the lands from the West side of Connecticut River to the East side of Delaware Bay; And also all those several Islands called or known by the name of Martin's Vineyard and Nantukes otherwise Nantucket; Together with all the Lands, Islands, Soils, Rivers, Harbors, Mines, Minerals, Quarries, Woods, Marshes, Lakes, Fishing, Hawking, Hunting and Fowling, and all other Royalties, Profits, Commodities, Hereditaments, to the said several Islands, Lands and premises belonging and appertaining, with their and every of their appurtenances; to Hold the same to my own proper use and behoof with power to correct, punish, pardon, govern and Rule the inhabitants thereof, by myself, or such Deputies, Commissioners or Officers as I shall think fit to appoint; as by His Majesty's said Letters Patents may more fully appear; and Whereas I have conceived a good opinion of the Integrity, Prudence, Ability and Fitness of Richard Nicolls, Esquire, to be employed as my Deputy there, I have therefore thought fit to constitute and appoint, and I do hereby constitute and appoint him, the said Richard Nicolls, Esquire, to be my Deputy Governor within the lands, Islands and places aforesaid. To perform and execute all and every the Powers which are by the said Letters Patents granted unto me to be executed by my Deputy, Agent, or assign, to have and to Hold the said place of Deputy-Governor unto the said Richard Nicolls, Esquire, during my will and pleasure only; Hereby willing and requiring all and every the Inhabitants of the said Lands, Islands and Places to give obedience to him the said Richard Nicolls in all things, according to the tenor of his Majesty's said Letters Patents; And the said Richard Nicolls, Esquire, to observe, follow, and execute such Orders and Instructions as he shall from time to time receive from myself. Given under my hand and seal at Whitehall, this second day of April, in the sixteenth year of the Reign of Our Sovereign Lord Charles the Second, by the Grace of God, King of England, Scotland and Ireland, etc., Annoque Domini, 1664.

By command of His Royal Highness, W. Coventry. James.

Patents I. 116-118; Leaming and Spicer 665-667.

Brodhead's History of the State of New York, Vol. II. 653.

AN INDIAN VILLAGE OF THE MANHATTANS,
Sketched by Van Lagrevenz, Waterman del.
Prior to the Occupation by the Dutch

No. 11

Indictment

Vio: Sec. 215 C. C.

UNITED STATES OF AMERICA [1]
IN THE DISTRICT COURT OF THE
UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Of the November Term, A. D. 1927

EASTERN DISTRICT OF MICHIGAN }
SOUTHERN DIVISION } ss.

The Grand Jurors of the United States of America empaneled and sworn to inquire in and for the body of the Southern Division of the Eastern District of Michigan, upon their oaths present: That heretofore, to-wit: on or about the 15th day of December, in the year of our Lord one thousand nine hundred and twenty-two, and from that time continuously up to and including the time of the returning of this indictment, at the City of Detroit, in the State of Michigan, at the City of Flint, in the State of Michigan, at the City of Ann Arbor, in the State of Michigan, at the City of Jackson, in the State of Michigan, all within the Eastern District of Michigan; and the City of New York, in the State of New York, and at various other Cities throughout the United States of America, the names of which Cities are to these Grand Jurors unknown, one

WILLIS T. GRIDLEY, also known as
W. T. GRIDLEY, and
GLADYS WRIGHT

both late of the City of Detroit, did unlawfully, wilfully, feloniously and knowingly devise and intend to devise a scheme and artifice to defraud the members of an association or associations known as Advocates of Justice for the Descendants of Anneke Jans Bogardus, and in particular those members of the association or associations located in the Cities of Detroit, Flint, Ann Arbor and Jackson, Michigan, and to obtain from the said members of the associations aforesaid large sums of money or property by means of false and fraudulent pretenses, representations and promises.

And the Grand Jurors aforesaid upon their like oaths do further present and says: That the said scheme and artifice so devised and so intended to be devised by the said Willis T. Gridley and Gladys Wright for the purpose of defrauding the aforesaid members of the aforesaid associations, and for the purpose of obtaining from the aforesaid members of the aforesaid associations large sums [2] of money and property by means of false and fraudulent representations, pretenses and promises was as follows:

That about December, A.D. 1922, an association of individuals of Wilkes-Barre, Pennsylvania, believing themselves and others as heirs of one Anneke Jans Bogardus, to be the lawful owners of a certain parcel of parcels of land located in the City of New York, State of New York, then and now occupied by Trinity Church Corporation and other corporations and individuals, were desirous of obtaining information and evidence which would establish the title of said property in the heirs of the said Anneke Jans Bogardus, who was a former owner of the property, and who died in the City of New York about the year 1663.

That these individuals came in contact with the defendants Willis T. Gridley and Gladys Wright and were informed by the said Willis T. Gridley and Gladys Wright that they posesssed and had access to information and evidence which would prove conclusively the heirs' title to said property, and that by means of this information and evidence the said heirs of Anneke Jans Bogardus could and would recover the title to said property. Which representations by the said Willis T. Gridley were false and fraudulent.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they, the said Willis T. Gridley and Gladys Wright would cause the aforesaid association to pay them large sums of money for the work that they, the said Willis T. Gridley and Gladys Wright were to perform in the obtaining of information and evidence establishing the title of the aforesaid heirs to the aforesaid property.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they, the said Willis T. Gridley and Gladys Wright would obtain the control, management and dominion of the associations aforesaid, and would by trickery, deception and imposing upon the good faith, honesty and gullibility of the members thereof, as the occasion demanded, change the plans and methods of operation of the said associations.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would not do [3] any of the things they promised to do at various meetings of the aforesaid associations held in the aforementioned Cities, but on the contrary would continue to beguile, deceive and defraud the members of the aforesaid associations.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would appropriate to their own use certain large sums of money which had been entrusted to them for a definite purpose.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would deliberately create suspicion and distrust among the members of said association against each other, so that in the event that any member of said associations should question any action of said defendants their action in so questioning could be considered as disloyalty.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, and for the purpose of defrauding the members of the associations aforesaid, and for the purpose of obtaining from the said members of said associations large sums of money as aforesaid, and for the purpose of executing said scheme and artifice and intending so to do, to place and cause to be placed in a postoffice of the United States at the City of Detroit, and within the jurisdiction of this Honorable Court, letters to be sent and delivered by the Postoffice establishment of the United States.

And it was further a part of said scheme and artifice aforesaid, so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, and for the purpose of defrauding the members of the associations aforesaid, and for the purpose of obtaining from the said members of said asociations large sums of money as aforesaid, and for the purpose of executing said scheme and artifice and intending so to do, to take and receive from the Postoffice of the United States at the City of New York, in the State of New York, certain letters which had been heretofore deposited in the

Postoffice of the United States at the City of Detroit, State of Michigan, for delivery by the postoffice of the United States to the addressees thereof.

And the Grand Jurors aforesaid, upon their like oaths do further present: That the said Willis T. Gridley and Gladys Wright, late of the City of Detroit, County of Wayne and State of Michigan, and within the jurisdiction of this Honorable Court, having devised and intending to devise the aforesaid scheme and artifice, and for the purpose of executing said scheme and artifice and attempting so to do, did, heretofore, to-wit: on or about the **11th day of January, A.D. 1926,** unlawfully, wilfully, feloniously and knowingly **cause to be placed in a postoffice of the United States at the City of Detroit,** State of Michigan, in the Division and District aforesaid, and within the jurisdiction of this Honorable Court, to be sent and delivered by the postoffice establishment of the United States to the said Willis T. Gridley and Gladys Wright, at their mailing address located in the City of New York, State of New York, to-wit: Postoffice Box 71, Times Square Station, New York City, State of New York, a certain letter bearing a cancelled United States postage stamp: Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States. [4]

SECOND COUNT:

And the Grand Jurors of the United States, upon their like oaths do further present: That heretofore, to-wit: **on or about the 15th day of December, A.D. 1922, and from that time continuously up to and including the time of the returning of this indictment,** at the City of Detroit, in the State of Michigan, at the City of Flint, in the State of Michigan, at the City of Ann Arbor, in the State of Michigan, at the City of Jackson, in the State of Michigan, all within the Eastern District of Michigan; and the City of New York, in the State of New York, and at various other Cities throughout the United States of America, the names of which Cities are to these Grand Jurors unknown, said Willis T. Gridley and Gladys Wright, both late of the City of Detroit, did unlawfully, wilfully, feloniously and knowingly devise and intend to devise a scheme and artifice to defraud the members of an association or associations known as the Advocates of Justice for the Descendants of Anneke Jans Bogardus, and in particular those members of the association or associations located in the Cities of Detroit, Flint, Ann Arbor, and Jackson, Michigan, and to obtain from the said members of the associations aforesaid large sums of money or property by means of false and fraudulent pretenses, representations and promises. [5]

And the grand Jurors aforesaid, upon their like oaths do further present and says: That the said scheme and artifice so devised and so intended to be devised by the said Willis T. Gridley and Gladys Wright for the purpose of defrauding the aforesaid members of the aforesaid associations, and for the purpose of obtaining from the aforesaid members of the aforesaid associations large sums of money and property by means of false and fraudulent pretenses, representations and promises was as follows:

That about December, A.D. 1922, an association of individuals of Wilkes-Barre, Pennsylvania, believing themselves and others as heirs of one Anneke Jans Bogardus, to be the lawful owners of a certain parcel or parcels of land located in the City of New York, in the State of New York, then and now occupied by Trinity Church Corporation and other corporations and individuals, were desirous of obtaining information and evidence which would establish the title of said property in the heirs of the said Anneke Jans Bogardus, who was a former owner of the property, and who dies in the City of New York about the year 1663.

That these individuals came in contact with the defendants Willis T. Gridley and Gladys Wright and were informed by the said Willis T. Gridley and Gladys Wright that they possessed and had access to information and evidence which would prove conclusively the heirs' title to said property, and that by means of this information and evidence the said heirs of Anneke Jans Bogardus could and would recover the title to said property. Which representations by the said Willis T. Gridley were false and fraudulent.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, that they, the said Willis T. Gridley and Gladys Wright would cause the aforesaid association to pay them large sums of money for the work that they, the said Willis Gridley and Gladys Wright were to perform in the obtaining of information and evidence establishing the title of the aforesaid heirs to the aforesaid property.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they, the said Willis T. Gridley and Gladys Wright would obtain the control, management and dominion of the associations aforesaid, and would by trickery, deception and imposing upon the good faith, honesty and gullibility of the members thereof, as the occasion demanded, change the plans and methods of operations of the said associations. [6]

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would not do any of the things they promised to do at various meetings of the aforesaid associations held in the aforementioned Cities, but on the contrary would continue to beguile, deceive and defraud the members of the aforesaid associations.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis Gridley and Gladys Wright that they would appropriate to their own use certain large sums of money which had been entrusted to them for a definite purpose.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would deliberately create suspicion and distrust among the members of said associations against each other, so that in the event that any member of said associations should question any action of said defendants their action in so questioning would be considered as disloyalty.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, and for the purpose of defrauding the members of the associations aforesaid, and for the purpose of obtaining from the said members of said associations large sums of money as aforesaid, and for the purpose of executing said scheme and artifice and intending so to do, to place and cause to be placed in a postoffice of the United States, at the City of Detroit, and within the jurisdiction of this Honorable Court, letters to be sent and delivered by the Postoffice establishment of the United States.

And it was further a part of said scheme and artifice aforesaid, so devised and intended to be devised by the

said Willis T. Gridley and Gladys Wright and for the [7] purpose of defrauding the members of the associations aforesaid, and for the purpose of obtaining from the said members of said associations large sums of money as aforesaid, and for the purpose of executing said scheme and artifice and intending so to do, to take and receive from the Postoffice of the United States at the City of New York, in the State of New York, certain letters which had been heretofore deposited in the Postoffice of the United States at the City of Detroit, State of Michigan, for delivery by the postoffice of the United States to the addressees thereof.

And the Grand Jurors aforesaid upon their like oaths do further present: That the said Willis T. Gridley and Gladys Wright, late of the City of Detroit, and within the jurisdiction of this Honorable Court, having devised and intending to devise the aforesaid scheme and artifice, and for the purpose of executing said scheme and artifice and attempting so to do, did, heretofore, to-wit: on or about **the 13th day of January, A.D. 1926,** unlawfully, wilfully, feloniously and knowingly **take and receive from the Times Square branch of the New York Postoffice, in the City of New York,** State of New York, and within the jurisdiction of this Honorable Court, a certain letter which had been heretofore deposited in the postoffice at the City of Detroit, in the State of Michigan, for delivery by the Postoffice of the United States to the said Willis T. Gridley: Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

THIRD COUNT:

And the Grand Jurors aforesaid, upon their like oaths do further present: That heretofore, to-wit: on or about the 15th day of December, A.D. 1922, and from that time continuously up to and including the time of the returning of this indictment, at the City of Detroit, in the State of Michigan, at the City of Flint, in the State of Michigan, at the City of Ann Arbor, in the State of Michigan, at the City of Jackson, in the State of Michigan, all within the Eastern District of Michigan, and the City of New York, in the State of New York, and at various other Cities throughout the United States of America, the names of which Cities are to these Grand Jurors unknown, said Willis [8] T. Gridley, also known as W. T. Gridley and Gladys Wright, both late of the City of Detroit, did unlawfully, wilfully, feloniously and knowingly devise and intend to devise a scheme and artifice to defraud the members of an association or associations known as Advocates of Justice for the Descendants of Anneke Jans Bogardus, and in particular those members of the association or associations located in the Cities of Detroit, Flint, Ann Arbor and Jackson, Michigan, and to obtain from the said members of the associations aforesaid large sums of money or property by means of false and fraudulent promises, representations and pretenses.

And the Grand Jurors aforesaid upon their like oaths do further present and say: That the said scheme and artifice so devised and so intended to be devised by the said Willis T. Gridley and Gladys Wright for the purpose of defrauding the aforesaid members of the aforesaid associations, and for the purpose of obtaining from the aforesaid members of the aforesaid associations large sums of money and property by means of false and fraudulent representations and promises and pretenses was as follows:

That about December, A.D. 1922, an association of individuals of Wilke-Barre, Pennsylvania, believing themselves and others as heirs of one Anneke Jans Bogardus, to be the lawful owners of a certain parcel or parcels of land located in the City of New York, State of New York, then and now occupied by Trinity Church Corporation and other corporations and individuals, were desirous of obtaining information and evidence which would establish the title of said property in the heirs of the said Anneke Jans Bogardus, who was a former owner of the property, and who died in the City of New York about the year 1663.

That these individuals came in contact with the defendants Willis T. Gridley and Gladys Wright and were informed by the said Willis T. Gridley and Gladys Wright that they possessed and had access to information and evidence which would prove conclusively the heirs' title to said property, and that by means of this information and evidence the said heirs of Anneke Jans Bogardus could and would recover the title to said property. Which representations [9] by the said Willis T. Gridley were false and fraudulent.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they, the said Willis T. Gridley and Gladys Wright would cause the aforesaid association to pay them large sums of money for the work that they, the said Willis T. Gridley and Gladys Wright were to perform in the obtaining of information and evidence establishing to the title of the aforesaid heirs to the aforesaid property.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they, the said Willis T. Gridley and Gladys Wright, would obtain the control, management and dominion of the associations aforesaid, and would by trickery, deception and imposing upon the good faith, honesty and gullibility of the members thereof, as the occasion demanded, change the plans and methods of operation of the said associations.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would not do any of the things they promised to do at various meetings of the aforesaid associations held in the aforementioned Cities, but on the contrary would continue to beguile, deceive and defraud the members of the aforesaid associations.

And it was further a part of said scheme and artifice and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would appropriate to their own use large sums of money which had been entrusted to them for a definite purpose.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would deliberately create suspicion and distrust among the members of said association against each other, so that in the event that any member of said associations should question any action of said defendants their action in so questioning would be considered as disloyalty.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, and for the purpose of [10] defrauding the members of the association aforesaid, and for the purpose of obtaining from the said members of said associations large sum of money as aforesaid, and for the purpose of executing said scheme and artifice and intending so to do, to place and cause to be placed in a postoffice of the United States at the City of Detroit and within

the jurisdiction of this Honorable Court, letters to be sent and delivered by the postoffice establishment of the United States.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, and for the purpose of defrauding the members of the associations aforesaid, and for the purpose of obtaining from the said members of said associations large sums of money as aforesaid, and for the purpose of executing said scheme and artifice and intending so to do, to take and receive from the postoffice of the United States at the City of New York, in the State of New York, certain letters which had been heretofore deposited in the postoffice of the United States at the City of Detroit, State of Michigan, for delivery by the postoffice of the United States to the addressees thereof.

And the Grand Jurors aforesaid, upon their like oaths do further present: That the said Willis T. Gridley and Gladys Wright, late of the City of Detroit, County of Wayne, and State of Michigan, and within the jurisdiction of this Honorable Court, having devised and intending to devise the aforesaid scheme and artifice, and for the purpose of executing said scheme and artifice, and attempting so to do, did, heretofore, to-wit: on or about the **23rd day of December, A.D. 1926**, unlawfully, wilfully, feloniously and knowingly **cause to be placed in a postoffice of the United States at the City of Detroit, State of Michigan,** in the Division and District aforesaid, and within the jurisdiction of this Honorable Court, to be sent and delivered by the postoffice establishment of the United States to the said Willis T. Gridley and Gladys Wright, at their mailing address located at the City of New York, State of New York, to-wit: Postoffice Box 71, Times Square Station, New York City, State of New York, a certain letter bearing a cancelled United States [11] Postage Stamp: Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

FOURTH COUNT:

And the Grand Jurors aforesaid, upon their like oaths do further present: That heretofore, to-wit: on or about the 15th day of December, A.D. 1922, and from that time continuously up to and including the time of the returning of this indictment, at the City of Detroit, in the State of Michigan, at the City of Flint, in the State of Michigan, at the City of Ann Arbor, in the State of Michigan, at the City of Jackson, in the State of Michigan, all within the Eastern District of Michigan; and the City of New York, in the State of New York, and at various other Cities throughout the United States of America, the names of which Cities are to these Grand Jurors unknown, said Willis T. Gridley and Gladys Wright, both late of the City of Detroit, unlawfully, wilfully, feloniously and knowingly devised and intended to devise a scheme and artifice to defraud the members of an association or associations known as the Advocates of Justice for the Descendants of Anneke Jans Bogardus, and in particular those members of the association or associations located in the Cities of Detroit, Flint, Ann Arbor and Jackson, Michigan, and to obtain from the said members of the associations aforesaid large sums of money or property by means of false and fraudulent pretenses, representations and promises.

And the Grand Jurors aforesaid upon their like oaths do further present: That the said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright for the purpose of defrauding the aforesaid members of the aforesaid associations, and for the purpose of obtaining from the aforesaid members of the aforesaid associations large sums of money and property by means of false and fraudulent pretenses, representations and promises was as follows:

That about December, 1922, an association of individuals of Wilkes-Barre, Pennsylvania, believing themselves and others as heirs of one Anneke Jans Bogardus, to be the lawful owners of a certain parcel or parcels of land located in the City of New York, in the State of New York, then and now occupied by Trinity Church Cor- [12] poration and other corporations and individuals, were desirous of obtaining information and evidence which would establish the title of said property in the heirs of the said Anneke Jans Bogardus, who was a former owner of the property, and who dies in the City of New York about the year 1663.

That these individuals came in contact with the defendants Willis T. Gridley and Gladys Wright and were informed by the said Willis T. Gridley and Gladys Wright that they possessed and had access to information and evidence which would prove conclusively the heirs' title to said property, and that by means of this information and evidence the said heirs of Anneke Jans Bogardus could and would recover the title to said property. Which representations by the said Willis T. Gridley were false and fraudulent.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, that they, the said Willis T. Gridley and Gladys Wright would cause the aforesaid association to pay them large sums of money for the work that they, the said Willis T. Gridley and Gladys Wright were to perform in the obtaining of information and evidence establishing the title of the aforesaid heirs to the aforesaid property.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they, the said Willis T. Gridley and Gladys Wright would obtain the control, management and dominion of the associations aforesaid, and would by trickery, deception and imposing upon the good faith, honesty and gullibility of the members thereof, as the occasion demanded, change the plans and methods of operation of the said association.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would not do any of the things they promised to do at various meetings of the aforesaid associations held in the aforementioned Cities, but on the contrary would continue to beguile, deceive and defraud the members of the aforesaid associa- [13] tions.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would appropriate to their own use certain large sums of money which had been entrusted to them for a definite purpose.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would deliberately create suspicion and distrust among the members of said associations against each other, so that in the event that any member of said associations should question any action of said defendants their action in so questioning would be considered as disloyalty.

And it was further a part of said scheme and artifice so

devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, and for the purpose of defrauding the members of the associations aforesaid, and for the purpose of executing said scheme and artifice and intending so to do, to place and cause to be placed in a postoffice of the United States at the City of Detroit, and within the jurisdiction of this Honorable Court, letters to be sent and delivered by the Postoffice establishment of the United States.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, and for the purpose of defrauding the members of the associations aforesaid, and for the purpose of obtaining from the said members of said associations large sums of money as aforesaid, and for the purpose of executing said scheme and artifice and intending so to do, to take and receive from the Postoffice of the United States at the City of New York, in the State of New York, certain letters which had been heretofore deposited in the Postoffice of the United States at the City of Detroit, Michigan, for delivery by the postoffice of the United States to the addressees thereof.

And the Grand Jurors aforesaid, upon their like oaths do further present: That the said Willis T. Gridley and Gladys Wright late of the City of Detroit, and within the jurisdiction of this Honorable Court, having devised [14] and intending to devise the aforesaid scheme and artifice, and for the purpose of executing said scheme and artifice and attempting so to do, did heretofore, to-wit: **on or about the 26th day of December, A.D. 1926,** unlawfully wilfully, feloniously and knowingly **take and receive from the Times Square Branch of the New York Postoffice,** in the City of New York, State of New York, and within the jurisdiction of this Honorable Court, a certain letter which had been heretofore deposited in the postoffice of the City of Detroit, State of Michigan, for delivery by the Postoffice of the United States to the said Willis T. Gridley: Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

FIFTH COUNT:

And the Grand Jurors aforesaid, upon their like oaths do further present: That heretofore, to-wit: on or about the 15th day of December, A.D. 1922, and from that time continuously up to and including the time of the returning of this indictment, at the City of Detroit, in the State of Michigan, at the City of Flint, in the State of Michigan, at the City of Ann Arbor, in the State of Michigan, at the City of Jackson, in the State of Michigan, all within the Eastern District of Michigan; and at the City of New York, in the State of New York, and at various other Cities throughout the United States of America, the names of which Cities are to these Grand Jurors unknown, said Willis T. Gridley and Gladys Wright, both late of the City of Detroit, did unlawfully, wilfully, feloniously and knowingly devise and intend to devise a scheme and artifice to defraud the members of an association or associations known as Advocates of Justice for the Descendants of Anneke Jans Bogardus, and in particular those members of the association or associations located in the Cities of Detroit, Flint, Ann Arbor and Jackson, Michigan, and to obtain from said members of the associations aforesaid large sums of money or property by means of false and fraudulent promises, representations and pretenses.

And the Grand Jurors aforesaid, upon their like oaths do further present: That the said scheme and artifice so devised and so intended to be devised by the said [15] Willis T. Gridley and Gladys Wright for the purpose of defrauding the aforesaid members of the aforesaid associations, and for the purpose of obtaining from the aforesaid members of the aforesaid associations large sums of money and property by means of false and fraudulent representations and pretenses was as follows:

That about December, A.D. 1922, an association of individuals of Wilkes-Barre, Pennsylvania, believing themselves and others as heirs of one Anneke Jans Bogardus, to be the lawful owners of a certain parcel or parcels of land located in the City of New York, State of New York, then and now occupied by Trinity Church Corporations and other corporations and individuals, were desirous of obtaining information and evidence which would establish the title of said property in the heirs of the Anneke Jans Bogardus, who was a former owner of the property, and who died in the City of New York about the year 1663.

That these individuals came in contact with the defendant Willis T. Gridley and Gladys Wright and were informed by the said Willis T. Gridley and Gladys Wright that they possessed and had access to information and evidence which would prove conclusively the heirs' title to said property, and that by means of this information and evidence the said heirs of Anneke Jans Bogardus could and would recover the title to said property. Which representations by the said Willis T. Gridley were false and fraudulent.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they, the said Willis T. Gridley and Gladys Wright would cause the aforesaid association to pay them large sums of money for the work that they, the said Willis T. Gridley and Gladys Wright were to perform in the obtaining of information and evidence establishing the title of the aforesaid heirs to the aforesaid property.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they, the said Willis T. Gridley and Gladys Wright, would obtain the con- [16] trol, management and dominion of the associations aforesaid, and would by trickery, deception and imposing upon the good faith, honesty and gullibility of the members thereof, as the occasion demanded, change the plans and methods of operation of the said associations.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would not do any of the things they promised to do at various meetings of the aforesaid associations held in the aforementioned Cities, but on the contrary would continue to beguile, deceive and defraud the members of the aforesaid associations.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would appropriate to their own use large sums of money which had been entrusted to them for a definite purpose.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would deliberately create suspicion and distrust among the members of said associations against each other, so that in the event that any member of said associations would question any action of said defendants their action in so questioning would be considered as disloyalty.

And it was further a part of said scheme and artifice so

devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, and for the purpose of defrauding the members of the associations aforesaid, and for the purpose of obtaining from the said members of said associations large sums of money as aforesaid, and for the purpose of executing said scheme and artifice and intending so to do, to place and cause to be placed in a postoffice of the United States at the City of Detroit, and within the jurisdiction of this Honorable Court, letters to be sent and delivered by the postoffice establishment of the United States.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, and for the purpose of defrauding the members of the associations aforesaid, [17] and for the purpose of obtaining from the said members of said associations large sums of money as aforesaid, and for the purpose of executing said scheme and artifice and attempting so to do, to take and receive from the postoffice of the United States at the City of New York, in the State of New York, certain letters which had been heretofore deposited in the postoffice of the United States at the City of Detroit, State of Michigan, for delivery by the postoffice of the United States to the addressees thereof.

And the Grand Jurors aforesaid, upon their like oaths do further present: That the said Willis T. Gridley and Gladys Wright late of the City of Detroit, County of Wayne and State of Michigan, and within the jurisdiction of this Honorable Court, having devised and intending to devise the aforesaid scheme and artifice and for the purpose of executing said scheme and artifice and attempting so to do, did heretofore, to-wit: on or about the 3rd day of February, A. D. 1926, unlawfully, wilfully, feloniously and knowingly cause to be placed in a postoffice of the United States at the City of Detroit, State of Michigan, in the Division and District aforesaid, and within the jurisdiction of this Honorable Court, to be sent and delivered by the postoffice establishment of the United States to the said Willis T. Gridley and Gladys Wright at their mailing address located at the City of New York, State of New York, to-wit: Postoffice Box 71, Times Square Station, New York City, State of New York, a certain letter bearing a cancelled United States Postage stamp: Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

SIXTH COUNT:

And The Grand Jurors aforesaid, upon their like oaths do further present: That heretofore, to-wit: on or about the 15th day of December, A.D. 1922, and from that time continuously up to and including the time of the returning of this indictment, at the City of Detroit, in the State of Michigan, at the City of Flint, in the State of Michigan, at the City of Ann Arbor, in the State of Michi- [18] gan, at the City of Jackson, in the State of Michigan, all within the Eastern District of Michigan; and the City of New York, in the State of New York, and at various other Cities throughout the United States of America, the names of which Cities are to these Grand Jurors unknown, said Willis T. Gridley and Gladys Wright, both late of the City of Detroit, unlawfully, wilfully, feloniously and knowingly devised and intended to devise a scheme and artifice to defraud the members of an association or associations known as the Advocates of Justice for the Descendants of Anneke Jans Bogardus, and in particular those members of the association or associations located in the Cities of Detroit, Flint, Ann Arbor and Jackson, Michigan, and to obtain from the said members of the associations aforesaid large sums of money or property by means of false and fraudulent pretenses, representations and promises.

And the Grand Jurors aforesaid upon their like oaths do further present: That the said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright for the purpose of defrauding the aforesaid members of the aforesaid associations, and for the purpose of obtaining from the aforesaid members of the aforesaid associations large sums of money and property by means of false and fraudulent pretenses, representations and promises was as follows:

That about December, A.D. 1922, an association of individuals of Wilke-Barre, Pennsylvania, believing themselves and others as heirs of one Anneke Jans Bogardus, to be the lawful owners of a certain parcel or parcels of land located in the City of New York, State of New York, then and now occupied by Trinity Church Corporation and other corporations and individuals, were desirous of obtaining information and evidence which would establish the title of said property in the heirs of the said Anneke Jans Bogardus, who was a former owner of the property, and who died in the City of New York about the year 1663.

That these individuals came in contact with the defendants Willis T. Gridley and Gladys Wright and were informed by the said Willis T. Gridley and Gladys Wright that they possessed and had access to information [19] and evidence which would prove conclusively the heirs' title to said property, and that by means of this information and evidence the said heirs of Anneke Jans Bogardus could and would recover the title to said property. Which representations by the said Willis T. Gridley were false and fraudulent.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, that they, the said Willis T. Gridley and Gladys Wright would cause the aforesaid association to pay them large sums of money for the work that they, the said Willis T. Gridley and Gladys Wright were to perform in the obtaining of information and evidence establishing the title of the aforesaid heirs to the aforesaid property.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they, the said Willis T. Gridley and Gladys Wright, would obtain the control, management and dominion of the associations aforesaid, and would be trickery, deception and imposing upon the good faith, honesty and gullibility of the members thereof, as the occasion demanded, change the plans and methods of operation of the said association.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would not do any of the things they promised to do at various meetings of the aforesaid associations held in the aforementioned Cities, but on the contrary would continue to beguile, deceive and defraud the members of the aforesaid associations.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright that they would appropriate to their own use certain large sums of money which had been entrusted to them for a definite purpose.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said [20] Willis T. Gridley and Gladys Wright that they would

deliberately create suspicion and distrust among the members of said associations against each other, so that in the event that any member of said associations should question any action of said defendants their action in so questioning would be considered as disloyalty.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, and for the purpose of defrauding the members of the associations aforesaid, and for the purpose of executing said scheme and artifice and intending so to do, to place and cause to be placed in a postoffice of the United States at the City of Detroit, and within the jurisdiction of this Honorable Court, letters to be sent and delivered by the Postoffice establishment of the United States.

And it was further a part of said scheme and artifice so devised and intended to be devised by the said Willis T. Gridley and Gladys Wright, and for the purpose of defrauding the members of the associations aforesaid, and for the purpose of obtaining from the said members of said associations large sums of money as aforesaid, and for the purpose of executing said scheme and artifice and intending so to do, to take and receive from the Postoffice of the United States at the City of New York, in the State of New York, certain letters which had been heretofore deposited in the Postoffice of the United States at the City of Detroit, Michigan, for delivery by the postoffice of the United States to the addressees thereof.

And the Grand Jurors aforesaid upon their like oaths do further present: That the said Willis T. Gridley and Gladys Wright late of the City of Detroit, and within the jurisdiction of this Honorable Court, having devised and intending to devise the aforesaid scheme and artifice and for the purpose of executing said scheme and artifice and attempting so to do, did heretofore, to-wit: on or about the 5th day of February, A.D. 1926, unlawfully, wilfully, feloniously and knowingly take and receive from the Times Square Branch of the New York Postoffice, in the City of [21] New York, State of New York, and within the jurisdiction of this Honorable Court, a certain letter which had been heretofore deposited in the postoffice of the City of Detroit, in the State of Michigan, for delivery by the postoffice of the United States to the said Willis T. Gridley: Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

O. L. Smith
United States Attorney
Eastern District of Michigan
G. H. Frederick
Assistant United States Attorney

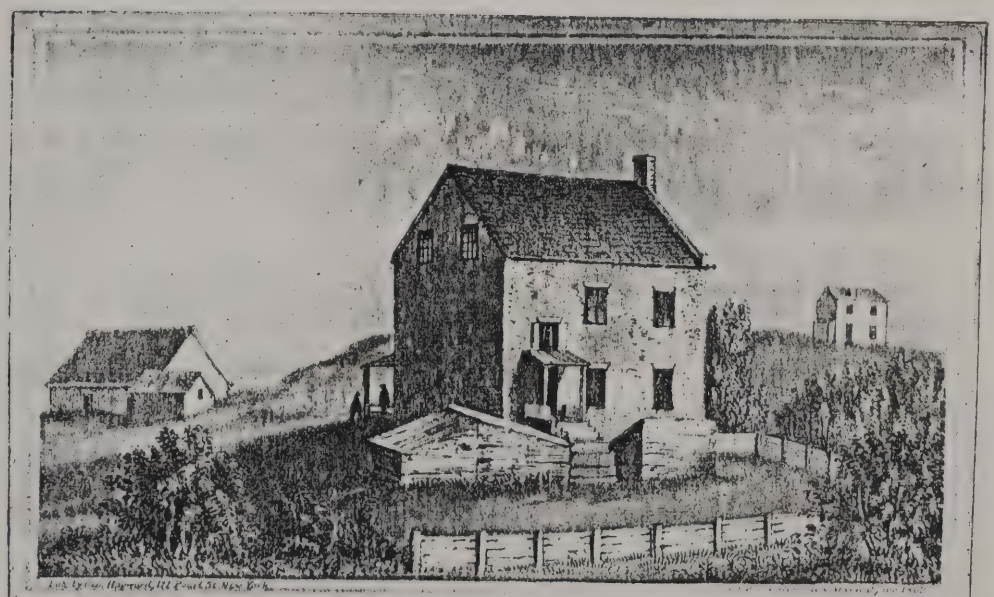
A true bill,
Chas. L. Dubuar, Foreman
(Filed in Clerk's Office,
March 2, 1928,
Elmer W. Voorheis, Clerk)

CERTIFIED COPY

I, Elmer W. Voorheis, Clerk of the United States District Court in and for the Eastern District of Michigan, do hereby certify that the annexed and foregoing is a true and full copy of the original INDICTMENT—
now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Detroit this 15th day of October, A.D. 1929.

Elmer W. Voorheis
Clerk.



OLD HOUSE, N.Y. 1849.
45th Street, near 5th Avenue

"A line or two in verse"

The Spirit of Christmas

Willis Timothy Gridley

The spirit of Christmas is with us again
The day of God's greatest gift unto man;
So to Him, the greatest giver of gifts,
Let us lift our hearts with thankfulness,
And may that Christlike gift, so rare,
Breathe into our lives, the spirit of prayer.

With the spirit of prayer, comes the spirit of love,
That God-given attribute sent from above;
Let sorrows be softened—let bitterness cease,
Let our hearts now rejoice, in one, perfect peace!
All join in the chorus, this blest Christmas time,
Peace on earth and goodwill,
to the whole of mankind.

As our Savior in pity our sins doth forgive,
May we, in His name, make a vow so to live,
That our lives as a blessed example shall shine,
To the glory of Him, our Savior divine;
So that when comes the end,
and our race shall be run,
May we hear from the Savior
"Good servant, well done!"

Wm. H. Huff
BILLINGS
OKLA.

"Seated that day in the court room
I was weary, and ill at ease.
My thoughts turned longingly backward
To the days of love and peace.

To the days when the dearest music,
Dear mother of mine was the tune,
You sang to us little children,
At morning, at night, and at noon.

While sitting there in the shadows,
I was seeking that chord again.
Longing again to find it,
Was I to search in vain?

Ah, no! A message of comfort,
Was wafted to me from afar.
It seemed the Harmonious Chorus,
Broke forth from the gates ajar!

It told of your love for me, mother,
It said, I was still your boy,
And the chord I thought lost was recovered,
My heart was uplifted with joy!

For the sweetest music from heaven
Are the chords of a mother's love,
The theme of our boyhood devotion,
Our God-given right from above.

"You've gone, but I'm sure that in heaven
You have heard that chord again,
Where troubles and sorrows ne'er enter
You have heard that grand Amen.

"And when, in the deepening shadows,
God calls the last two to your side
We'll all walk in that Holy City
With the Angel of Love for our guide."

Willis Timothy Gridley

In His Name

A Merry Christmas! A Glad New Year!
I send with this card a message of cheer.
A word to carry you on your way,
When skies seem dark, and sad the day.

There's never a cloud in the Heaven's blue
But the silver is there, with hope for you.
There's never a sorrow, never a pain,
But what, as the sunshine follows the rain,
You'll find your Saviour's comforting hand
To sustain and keep you—you understand.

If you're happy and jolly and of good cheer,
On this day of days of all the year,
Take His Spirit of giving,
and remember those,
Whose lives seem full of sorrows and woes;
Who are searching the clouds
for that silver lining
And wondering if the sun is still shining.

May God's rich blessings with you abide,
And make you happy this Christmastide.
In Memory of His great Gift to you,
May you be generous and loving too,
And to those whose lives are bleak and drear,
Bring Merry Christmas
and a Glad New Year.

Willis Timothy Gridley

In Memoriam

To My Mother

Helen M. Gridley

Mother o' mine, I breathed a prayer,
As I bent o'er your coffin, standing there.
I asked the Saviour that sun might shine,
And lead you safely, oh mother o' mine
Through Valley of Death to the mercy seat,
And that you, and your loved ones, there may meet.

I prayed that God, with kindly hand,
Would lead our family to understand
That in this world of sorrow and sin,
It is only with love we can hope to win.

That far too often the souls of men,
Are used as barter for gold, and then
They come face to face with the Valley of Death,
And up to the question—what was it worth?

So I bow my head again in prayer,
Can you hear it yonder, away up there?
May our Saviour guide your tottering feet,
Safe, safe to his kingdom, and may we meet
Dear mother o' mine, when this all is past,
And all join hands in Heaven at last.

—Willis Timothy Gridley

My New Year's Dream

I wonder why it is a fire
Attracts us so—we never tire.
Before a fire we'll start to ponder
On olden times our minds will wander.

'Twas thus I sat last New Year's Eve.
Old memories came, my heart to grieve,
When clear above the bells then ringing,
I heard a Heavenly choir singing.

"Ring out! Ring out your old year's sorrows!
Ring in a year of bright tomorrows!
Ring in a year of happiness!
Ring in a year of peace and grace!"

I plucked up courage, called Old Year,
And bade him go; but with some fear
That New Year might not bring relief,
I'd not much faith, or much belief.

I saw him start towards the door,
When out it swung and there before
Us stood a little child,
His face a picture wreathed in smiles.

"What do you here?" the Old Year asked.
"I am New Year, and 'tis my task
To wake the world, bid it rejoice,
And you bet they do, when they hear my voice."

Then once again the doorway framed,
Another visitor—"And what's your name?"
"I'm memory—I'm always here,
Accompanying the new-born year."

"The years roll on, and each New Year
Brings this young child, so full of cheer;
But I am here, close, close behind.
I bring men back—I rule the mind."

The door swung outward once again,
And framed this time a stalwart man;
So strong was he, so good to see,
His presence quieted memory.

"And who are you?" the Old Year asked.
"I'm Hope, strong Hope, and 'tis my task,
To bid the world with me take heart.
Begone you two! Depart! Depart!

"Old Year, take Memory, as of yore,
And both be sure to close the door.
We two will ring the Old Year out,
And welcome New Year with a shout!"

"For unto us a Child was born,
We welcomed him on Christmas morn.
He brings to us a bright New Year,
And bids the world be of good cheer."

"Let every man take hope anew,
Ring out the old, ring in the new!
Resolve to make this year worth while,
Meet all its problems with a smile."

"For after all some grit and pluck
A little hope, a little luck,
A strong belief in God above,
Will bring success, with peace and love."

I started up—"Where had I been?"
I realized 'twas but a dream,
The New Year's bells continued ringing
I still could hear that choir singing.

"Ring out the year of care and sadness,
"Ring in a year of peace and gladness,
Ring out the days of pain and sorrow,
Open your hearts! Here comes tomorrow!"

—Willis Timothy Gridley

Verses to my friend Betty Rowley on her 83rd birthday

There is no use to talk, my one greatest blessing
Is a dear little lady called "Mother"
She's a comfort and joy, and to you I'm confessing
To me she's a friend like none other.

For she comes close to me when my heart is sad,
Does this dear little lady called "Mother"
And with hands on my head says "cheer up, don't feel bad!
One day cannot be like another."

"Tho' it's storming today, tomorrow the sun
May shine just as brightly as ever;
But keep right on fighting, the race will be won
No matter how gloomy the weather."

In her dear wrinkled face she tells a sweet story
Of a life full of peace so divine;
For it's full of contentment and shines with God's Glory,
This dear little lady of mine.

When God calls her hence to her home up above
Where loved ones are gathered together
I know that in heaven everybody will love
This dear little lady called "Mother."

—Willis Timothy Gridley

Lines to Rev.... at Christmastime

ꝏ ꝏ ꝏ

I was a stranger, and ye took me in,
A kindly hand stretched forth to him,
Who came within your gates.

May our Father's love with you abide,
This happy, happy Christmastide,
And through ensuing years.

That many men whose hearts are sore,
May find with you an open door,
To friendship most sincere.

Willis Timothy Gridley

Lines written for Mrs. M.... upon the death of her mother:

Lord, thou hast taken her I loved the best.
Out there among the grasses, she's at rest,
And I, a storm-tossed soul, am left alone,
Longing for her, and that place we called "Home".

Her cheery ways, with ever a smile to greet,
Even the stranger, on the busy street.
How I shall miss them, Lord, from day to day,
And her dear presence, helping me alway.

Lord teach me now to say, "Thy Will be done,"
And may I live, so when my race is run,
I leave behind, naught but kind deeds, a cheery smile,
As that dear angel, lent to earth awhile.

Willis Timothy Gridley

Hitchie . . . oooo

There was an old lawyer named Hitch,
Who was black as proverbial pitch.
He didn't care who
He put in his stew.
He's got the disease "money itch."

He had for a client one Ridley,
Whose affairs he mixed up higgly-piggly.
He drew wills galore,
How they stamped and they swore,
Hitchie's got their affairs very wiggly.

He's a codger is this fellow Hitch,
He'd give one the seven year itch,
Just to hear him explain,
As he covers his game,
That he's saved many men from the ditch.

'Tis said he's V. P. of a bank,
But for that the Dates family he thanks,
If they want anything,
They just ting-a-ling-ling
On the phone, and Hitch uses his shanks.

Now Hitchie's mixed up pretty bad,
And it seems George and Willis are glad,
For between him and Dates,
With their lies and their hates
They're exposing their methods . . . 'tis sad!

Well, never mind Hitch, you're so old,
That your greed for the silver and gold,
Will all be forgiven,
When your soul has been shriven
For on earth you're too cheap to be sold.

HECKMAN
BINDERY INC.
OCT 92
N. MANCHESTER,
INDIANA 46962